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No. 84-5059 (1)

In the Supreme Court of the United States

OCTOBER TERM, 1984

PATRICK RAMIREZ, PETITIONER

v.

STATE OF INDIANA, RESPONDENT

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF INDIANA

JOINT APPENDIX

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(Appointed by this Court)
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PETITION FOR CERTIORARI FILED JULY 13, 1984
CERTIORARI GRANTED OCTOBER 29, 1984

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RELEVANT DOCKET ENTRIES

Date	Entry
3/20/79	Information in Cause 424 filed
4/5/79	Waiver of Arraignment in Cause 424; entry of not guilty plea
11/16/79	Recommendation for Plea Bargain filed in Cause 424
12/14/79	Court rejects Recommendation for Plea Bargain in Cause 424
2/19/80	Information filed in Cause 470
7/23/81	Recommendation for Plea Bargain in Cause 424 filed
8/17/81	Motion to Withdraw Plea Bargain in Cause 424
1/18/82	Motion to Dismiss Cause 424
1/25/82	Hearing on Motion to Dismiss
1/26/82	Motion to Dismiss denied
5/14/82	Petitioner pleads Guilty in Cause 470
5/17/82	Verdict delivered in Cause 424
6/8/82	Petitioner sentenced in Cause 424 and 470
8/10/82	Motion to Correct Errors
10/26/82	Motion to Correct Errors denied
10/26/83	Opinion of Court of Appeals of Indiana
2/1/84	Rehearing Denied in Court of Appeals of Indiana
5/11/84	Petition to Transfer to Court of Appeals of Indiana denied
7/13/84	Petition for Certiorari filed
10/29/84	Petition for Certiorari granted
11/13/84	Motion for Appointment of Counsel granted

CAUSE 424—INFORMATION DATED MARCH 20, 1979, CHARGING PETITIONER WITH DEALING IN SCHEDULE IV CONTROLLED SUBSTANCE. (7-17)

PLEAS AND PROCEEDINGS had before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the Honorable Don P. Button, Pro Tempore of the Howard Superior II Court, the Honorable Edward S. Mahoney, Judge Pro Tempore of the Howard Superior II Court, and the Honorable L. Owen Bolinger, Judge Pro Tempore of the Howard Superior II Court, at a term thereof began and held at the Courthouse in the City of Kokomo, County of Howard, and State of Indiana, which pleas and proceedings were had in the cause entitled as follows:

STATE OF INDIANA

vs.

PATRICK RAMIREZ

BE IT FURTHER REMEMBERED that heretofore, to-wit on the 20th day of March, 1979 before the Honorable Don P. Button, Judge Pro Tempore of the Howard Superior II Court, the following proceedings were had.

Comes now Curtis Welke, Deputy Prosecuting Attorney in and for the 62nd Judicial Circuit of Howard County, State of Indiana, and files Information and Affidavit for Probable Cause charging the defendant with Dealing in Schedule IV Controlled Substance, which Information and Affidavit are in words and figures as follows:

(H.I.)

SEE MICROFILM SUPERIOR COURT DIVISION II CRIMINAL CAUSE #424 FOR INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT I

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 28th day of January, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT II

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 9th day of March, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
CURTIS C. WELKE
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

[Filed Apr. 14, 1983]

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

WITNESSES:

1. Lt. Gary Ashenfelter
KPD
Kokomo, Indiana 46901

2. Sgt. Jack Adams
KPD
Kokomo, Indiana 46901

3. Lt. John Hurlock
KPD
Kokomo, Indiana 46901

4. Sgt. John Cardwell
KPD
Kokomo, Indiana 46901

5. Sgt. Mike Cody
KPD
Kokomo, Indiana 46901

6. Sgt. David Minor
KPD
Kokomo, Indiana 46901

7. K8-169
KPD
Kokomo, In.

8. Sgt. Charles Hackett
KPD
Kokomo, Indiana 46901

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

No. 424

STATE OF INDIANA

vs

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

COUNT III

INFORMATION FOR DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE

Before me, Notary Public, Prosecuting Attorney came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 12 day of March, 1979, at the county of Howard, and State of Indiana, PAT RAMERIZ late of said county, did then and there knowingly or intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: Diazepam then and there being affiant is informed and believes, contrary to the form of

the statutes, to-wit: I.C. 35-48-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Gary Ashenfelter
Affiant

Subscribed and sworn to before me this 20th day of March, 1979.

/s/ Curtis C. Welke
CURTIS C. WELKE
Notary Public
Deputy Prosecuting Attorney

My Commission Expires: 4-2-82

[Filed Apr. 14, 1983]

Approved by me, /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

WITNESSES:

1. Lt. Gary Ashenfelter
KPD
Kokomo, Indiana 46901

2. Sgt. Jack Adams
KPD
Kokomo, Indiana 46901

3. Lt. John Hurlock
KPD
Kokomo, Indiana 46901

4. Sgt. John Cardwell
KPD
Kokomo, Indiana 46901

5. Sgt. Mike Cody
KPD
Kokomo, Indiana 46901

6. Sgt. David Minor
KPD
Kokomo, Indiana 46901

7. K8-169
KPD
Kokomo, In.

8. Sgt. Charles Hackett
KPD
Kokomo, Indiana 46901

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

Cause Number 424

STATE OF INDIANA

—vs—

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

AFFIDAVIT FOR PROBABLE CAUSE

Bruce Hamlin swears or affirms that he believes and has good cause to believe that:

I am a resident of and am employed in Howard County, Indiana. I am twenty-six years of age.

On January 28, 1979, at approximately 12:15 P.M., I purchased from Pat Rameriz 28 tablets represented by Pat Rameriz to be Quaaludes. I paid him $56.00 for these tablets. This transaction took place in my apartment at 1324½ North Lafountain Street, Kokomo, Howard County, Indiana. I have known Pat Rameriz for about six or seven years.

The next day, on January 29, 1979, I went to the CID office in Kokomo and turned these 28 tablets over to Detective Sgt. John Cardwell and Lt. Gary Ashenfelter.

On March 9, 1979 approximately 11:15 P.M., I was at the residence of Pat Rameriz, 604 West Jefferson Street, Kokomo, Indiana. At this time Pat Rameriz gave to me 50 individually wrapped tablets in aluminum foil marked Rorer De Mexico Quaaludes 300. I then left Pat Rameriz's house and drove to an alley off of Buckeye Street near its intersection with Superior Avenue. At this location I met Sgt Dave Minor and Lt. John Hurlock. These 50 tablets were given to Lt. Hurlock at that time.

On March 12, 1979 at approximately 9:10 P.M. Pat Rameriz gave me 50 individually wrapped tablets in aluminum foil, marked Rorer DE Mexico Quaalude 300. This happened at the residence of Pat Rameriz located at 604 West Jefferson Street, Kokomo, Indiana. After receiving these tablets I left Pat Rameriz's house and drove to the alley behind the CID office. As soon as I got out of my car I handed these 50 tablets to Lt. Gary Ashenfelter.

Further Affiant saith not.

/s/ Bruce W. Hamlin
BRUCE HAMLIN
Affiant

Subscribed and sworn to before me this 20th day of March, 1979

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting Attorney
Notary Public

My Commission Expires 4-2-82

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR II COURT

Cause Number 424

STATE OF INDIANA

—vs—

PAT RAMERIZ

DOB 3-12-47

Soc. Sec. 317-46-2605

[Filed Mar. 20, 1979]

AFFIDAVIT FOR PROBABLE CAUSE

Lt. Gary Ashenfelter swears or affirms that he believes and has good cause to believe that:

Affiant is an officer of the Kokomo Police Department, Kokomo, Indiana.

On January 29, 1979 I received from Bruce Hamlin 28 individually wrapped tablets marked Rorer De Mexico Quaaludes 300. I delivered these to the Indiana State Police Laboratory for testing, and a preliminary test showed the tablets contained Diazepam, a Schedule IV drug.

On March 12, 1979 I received from John Hurlock 50 individually wrapped tablets marked Rorer De Mexico Quaaludes 300. At a later time I performed a field test for barbiturates on one of these tablets and received a positive result for the presence of barbiturates.

On March 12, 1979 at approximately 9:00 P.M., Sgt. Cardwell, Sgt. Adams and I were with Bruce Hamlin. I performed a search of Bruce Hamlin and the car he was driving. Bruce Hamlin informed us he was to meet Pat Rameriz at his (Rameriz's) house to obtain 50 quaaludes that Rameriz wanted Hamlin to sell. Sgt. Cardwell, Sgt. Adams and I then followed Bruce Hamlin to the rear of 604 West Jefferson, the home of Pat Rameriz. A short time later Pat Rameriz came out of the house and walked up to Hamlin's car. At approximately 9:10 P.M. Pat Rameriz went back into the house. Hamlin then drove away. We three officers followed him to the alley behind the CID office and as soon as Hamlin got out of the car he handed me 50 individually wrapped tablets. Each tablet was marked on the outside Rorer De Mexico Quaaludes 300. I later field tested one of the tablets and received a positive result for the presence of barbiturates.

Further Affiant saith not.

/s/ Gary Ashenfelter
GARY ASHENFELTER
Affiant

Subscribed and sworn to before me this 20th day of March, 1979

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
Notary Public

My Commission Expires 4-2-82

Court having examined said Affidavit and being well advised in the premises thereof now finds that there is

probable cause for the issuance of an arrest warrant for the defendant for the Defendant for the offense charged.

Warrant ordered.

Court now sets bond in the amount of Three Thousand ($3,000.00) Dollars for each Count.

Defendant is charged with three (3) counts.

[Filed Apr. 14, 1983]

$3,000.00 Bond—Each Count

BENCH WARRANT
SUPERIOR COURT II

No. 424

STATE OF INDIANA

vs.

PAT RAMERIZ

[Filed Apr. 22, 1979]

Fred G. Osborne
Prosecuting Attorney

STATE OF INDIANA,
HOWARD COUNTY, SS:

—H.C.S.D.—

The State of Indiana to the Sheriff of Howard County, Greeting:

You are hereby commanded to arrest Pat Rameriz if he may be found in your bailiwick, so that you have his body before the Judge of Superior Court II of Howard County, instanter, and then and there to answer the State of Indiana on a charge of Dealing in a Schedule IV Controlled Substance—Three counts and abide the order of the Court thereon, and return this writ.

WITNESS, The Clerk and Seal of said Court this 20th day of March, 1979.

/s/ Clifford Linebach
Clerk

SHERIFF'S RETURN

THIS WRIT CAME TO HAND MARCH 20, 1979 SERVED AS COMMANDED BY ARRESTING PAT RAMERIZ

/s/ Robert Sargent
Sheriff

DONE 3-20 1979

TEMPLIN-HURLOCK
Deputy

CAUSE 424—WAIVER OF ARRAIGNMENT; ENTRY OF NOT GUILTY PLEA DATED APRIL 5, 1979. (21)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 5th day of April, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Mr. Dennis Parry.

Comes now the defendant and appears in open Court in person and with counsel, Charles Scruggs.

Defendant's counsel requests thirty (30) days to file motions.

The Court having examined such request and being well advised in the premises thereof now grants such request.

Defendant moves to waive reading of Information and formal arraignment.

Court so waives.

Defendant now pleads not guilty and requests trial by jury.

Court now sets jury trial at 9:30 A.M. August 23, 1979.

* * * *

CAUSE 424—ARRAIGNMENT HEARING APRIL 5, 1979 CHARGING PETITIONER WITH THREE COUNTS OF DEALING IN A SCHEDULE IV CONTROLLED SUBSTANCE. (460-464)

JUDGE: This is criminal cause number 424, State of Indiana versus Pat Ramirez. You're Pat Ramirez?

A. Yes sir.

JUDGE: All right, the record will show that the State is represented by Mr. Dennis Parry, and the Defendant appears in person and by counsel, Mr. Charles Scruggs. Mr. Scruggs, this matter was set on the card for arraignment this afternoon, are you ready to proceed?

MR. SCRUGGS: Yes, Your Honor, subject to the court granting me thirty days from today to file any motions addressed to the Information or any motions which are required to be filed before arraignment?

MR. PARRY: State has no objection to that.

JUDGE: Then your, subject to that being granted which will be granted you're ready to proceed?

MR. SCRUGGS: Yes, Judge. And the Defendant moves to waive reading of the Informations, three counts. He has read each of the counts. He knows and understands what he's charged with. He knows the possible penalties.

JUDGE: And rights at trial?

MR. SCRUGGS: Yes, and we'd advise the court he intends to plead not guilty and request trial by jury.

JUDGE: All right, any objection to that, Mr. Parry?

MR. PARRY: No sir.

JUDGE: All right, Mr. Ramirez, you're willing to waive formal arraignment and waive reading of the charges at this time, is that right?

A. Yes sir.

JUDGE: And you feel that you're ready to enter a plea now?

A. Yes sir.

JUDGE: Court will indicate that formal arraignment is waived; reading of the Information is waived. Court will ask you, Mr. Ramirez, how you plead to Count I, Information for Dealing in a Schedule IV Controlled Substance?

A. Not guilty, I mean, not guilty.

JUDGE: Count II, Information for Dealing in a Scheduled IV Controlled Substance?

A. Not guilty.

JUDGE: Count III, Information for Dealing in a Schedule IV Controlled Substance?

A. Not guilty.

JUDGE: All right, now there's a request for jury trial, is that right?

MR. SCRUGGS: Yes, Judge.

JUDGE: August 23rd?

MR. SCRUGGS: That's fine.

JUDGE: All right, we'll set this matter for jury trial, August 23, 9:30. You say that you're willing to have 427 and 428 arraigned today as well?

MR. SCRUGGS: Yes, Your Honor.

JUDGE: And you're entering your appearance?

MR. SCRUGGS: Yes.

JUDGE: All right, show that Mr. Scruggs enters his appearance in 427 and 428 for the defendant. We'll show in both cases that Mr. Parry appears for the State, Defendant appears in person and with counsel, Mr. Charles Scruggs. Now, Mr. Scruggs, you're willing to go forward with arraignment today on the same proviso as this other case?

MR. SCRUGGS: Yes, with the same record, I'd like thirty days in which to file any prearraignment motions to both of the charges. And we will waive formal arraignment on both charges, waive reading of the Information. He knows and understands what he's charged with and he knows his constitutional rights. We will plead not guilty and request trial by jury.

JUDGE: Mr. Parry, any objections to the thirty-day motions?

MR. PARRY: No sir, and no objections to waiving the formal arraignment.

JUDGE: All right, we'll show that Mr. Scruggs is given thirty days to file his motion. Mr. Ramirez, on both 427 and 428, you're willing to waive formal arraignment and formal reading of the charges, is that right?

A. Yes.

JUDGE: All right, on both cases show that formal reading is waived, reading of the charges is waived. In 427 you're ready to enter your plea then at this time, is that right?

A. Yes.

JUDGE: 427, the charge is an Information for Conspiracy to Commit a Felony. How do you plead to that?

A. Not guilty.

JUDGE: All right, and 428, it's an Information for Conspiracy to Commit Prostitution, how do you plead to that?

A. Not guilty.

JUDGE: Ok, and you're requesting jury trials?

A. Yes sir.

JUDGE: I take it we're talking about two?

MR. PARRY: Yes sir, we have different witnesses.

JUDGE: We'll take 427 first. August 30 all right?

MR. SCRUGGS: Yes.

JUDGE: All right, we'll set 427 for jury trial August 30th at 9:30. And then 428, September 13th. All right, we'll set 428 for jury trial September 13th at 9:30. Mr. Ramirez, it's necessary that if you change your job or place of residence or telephone number that you let Mr. Scruggs know so that he can keep in contact.

A. Yes sir.

JUDGE: All right, that's all.

AND NO FURTHER EVIDENCE WAS PRESENTED IN THIS CAUSE ON THIS DATE.

CAUSE NO. 424—MOTION DATED APRIL 18, 1979, FOR REDUCTION OF BOND.

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 18th day of April, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now Curtis Welke and appears in open Court for the State of Indiana.

Comes now the Defendant and appears in open Court in person and with counsel, Charles Scruggs.

Said cause is now submitted to the Court.

Evidence is heard on Motion for Reduction of Bond filed heretofore herein.

Court having heard evidence and being well advised in the premises thereof now grants Motion and reduces bond to Three Thousand ($3,000.00).

* * * *

CAUSE 424—RECOMMENDATION FOR PLEA BARGAIN FILED. NOVEMBER 16, 1979. (36-38)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 16th day of November, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Curtis Welke.

Comes now the defendant and appears in open Court in person and with counsel, Charles Scruggs.

Recommendation for Plea Bargain is filed in open Court, which Recommendation is in words and figures as follows: (H.I.)

Defendant now moves to withdraw plea of not guilty in Cause No. 424 to Count I and Cause No. 427 and enter a plea of guilty to those counts pursuant to Recommendation of Plea Bargain filed this date.

Information is read to Defendant on both Cause No. 424 and 427.

Statutes read to the Defendant.

Potential penalties read to the Defendant.

Defendant is advised of rights to trial and counsel.

Defendant advises no threats or promises have been made to secure a plea.

Defendant is advised of rights waived by plea of guilty.

Court now refers matter to the probation department for pre-sentence investigation report.

Court now sets ruling at 1:30 P.M., December 6, 1979.

* * * *

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Nov. 16, 1979]

RECOMMENDATION OF PLEA BARGAIN

Comes now the State of Indiana by Deputy Prosecuting Attorney, the Defendant, Patrick Ramirez, and counsel for Defendant, Charles H. Scruggs, and files Recommendation of Plea Bargain as follows, to-wit:

1. The Prosecutor anticipates that the Defendant, Patrick Ramirez, intends to enter a plea of guilty to, Dealing in a Schedule IV Controlled Substance as charged in this cause, and guilty to Conspiracy to Commit Theft as charged in cause #427 in this Court.

2. That said recommendation is filed with the Court prior to entry of above plea.

3. That said recommendation is as follows:

a. Cause No. 428 in this Court be dismissed;

b. That the defendant be sentenced to the Indiana Department of Corrections for five (5) years on Cause

No. 424 and two (2) years on Cause No. 427, said sentences to run concurrently;

c. that both of the above sentences be suspended and the defendant be placed on probation for a period of four (4) years;

d. that as a special condition of probation, the defendant agrees to waive his constitutional rights against search and seizure as to the probation department;

4. That Defendant states to the Court that said recommendation is made of his own free and voluntary act and that no one has threatened or promised him anything other than that contained herein. Further that Defendant fully understands the consequences of this recommendation.

5. The Defendant has been advised and understands that this Court is not bound by this recommendation, however the Defendant also understands that if this recommendation is rejected by the Court, it must be so rejected before the case is tried.

STATE OF INDIANA BY:

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
CURTIS C. WELKE

/s/ Pat Ramirez
Defendant
PATRICK RAMIREZ

/s/ Charles H. Scruggs
Attorney for Defendant
CHARLES H. SCRUGGS

[Filed Apr. 14, 1983]

CAUSE 424—HEARING NOVEMBER 16, 1979, ON RECOMMENDATION FOR PLEA BARGAIN. (475-490)

JUDGE: All right, this is Cause No. 424, State of Indiana versus Patrick Ramirez, and 427, State versus Patrick Ramirez. The record will show that Mr. Welke appears for the State. Defendant appears in person and by his counsel, Mr. Charles Scruggs. The record will show the Recommendation of Plea Bargain has been filed. Mr. Scruggs, do you have motions to make?

MR. SCRUGGS: Yes, Your Honor, the Defendant moves to withdraw his pleas of not guilty in Cause No. 424 and to Cause No. 427, and specifically Count I of Cause No. 424, and for leave of court to enter pleas of guilty on those counts pursuant to a written Recommendation of Plea Bargain which has been filed with the court this morning.

JUDGE: All right, is that what you want to do, Mr. Ramirez?

A. Yes sir.

JUDGE: All right, we're going to have to go through some reading and explaining for the record here because I think that these were all waived at one time. Count I of 424 reads as follows, "that on or about the 28th day of January, 1979, at the County of Howard, State of Indiana, Pat Ramirez, late of said county, did then and there knowingly and intentionally deliver a controlled substance classified in Schedule IV of the Indiana Uniform Controlled Substances Act, to-wit: how do you pronounce that gentlemen? Diazepan. Then and there being affiant is informed and believes contrary to the form of the statutes, to-wit: IC 35-38-4-3 in such cases made and provided, and against the peace and dignity of the State of Indiana." You've heard me read that Count I in 424, Mr. Ramirez?

A. Yes sir.

JUDGE: 424 is a Conspiracy to Commit A Felony. That Information reads as follows: "That on or about the 15th day of March, 1979, at the County of Howard, and State of Indiana, Patrick Ramirez with intent to commit a felony to-wit: theft, did agree with Bruce Hamlin to commit said felony, namely theft, and that said Patrick Ramirez did perform an overt act, to-wit: take the stolen property, conceal the same on his premises in furtherance of the agreement then and there being as affiant is informed and believes contrary to the form of the statutes, to-wit: IC 35-41-5-2, in such cases made and provided and against the peace and dignity of the State of Indiana." Signed by an affiant, notary and approved by the prosecutor. You've heard me read that information?

A. Yes sir.

JUDGE: All right, the dealing in controlled substances act reads as follows: "A person who (1) knowingly or intentionally manufactures or delivers a controlled substance pure or adulterated classified in Schedule IV, or (2) possesses with intent to manufacture or deliver a controlled substance, pure or adulterated, classified in Schedule IV, commits dealing in a Schedule IV Controlled Substances, a Class C felony. However, the offense is a Class B felony if the person delivered the substance to a person under eighteen years of age at least three years his junior." In 427, we're dealing with conspiracy to commit a felony. The conspiracy statute, "A person conspires to commit a felony when with intent to commit the felony, he agrees with another person to commit a felony. A conspiracy to commit a felony is a felony of the same class as the underlying felony. However, a conspiracy to commit murder is a Class A felony. B. The state must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement. C. It is no defense that the accused person with whom he alleged to have conspired, (1) has not been prosecuted, (2) has not been convicted (3) has been acquitted, (4) has been convicted of a dif-

ferent crime, (5) can not be prosecuted for any reason or, lacked the capacity to commit the crime." So, we're talking about a D here, is that right?

MR. SCRUGGS: Right.

JUDGE: The Class C felony statute for penalty reads as follows: "A person who commits a Class C felony shall be imprisoned for a fixed term of five years with not more than three years added for aggravating circumstances or not more than three years subtracted for mitigating circumstances. In addition, he may be fined not more than $10,000." That is for the Dealing in Schedule IV Controlled Substances charge for 424. The D felony penalty statute, "A person who commits a Class D felony shall be imprisoned for a fixed term of two years with not more than two years added for aggravating circumstances. In addition, he may be fined not more than $10,000. B. Not withstanding sub-section A of this section, if a person has committed a Class D felony, the court may enter judgment on conviction of a Class A misdemeanor and sentence accordingly. The court shall enter in the record in detail the reason for its' action whenever it exercises the power granted in this sub-section The Class A misdemeanor penalty statute reads as follows: "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. In addition he may be fined not more than $5,000. You've heard me read these statutes pertaining to the crimes involved here and the penalties? Mr. Ramirez?

A. Yes sir.

JUDGE: All right, do you understand that although you're agreeing to plead guilty on this Recommendation of Plea Bargain, that you don't have to plead guilty? You may have jury trials on these matters? Do you understand that?

A. Yes.

JUDGE: You have a right to a speedy public trial by court or by jury in the county in which the state alleges these matters took place?

A. Yes.

JUDGE: You understand that unless we differentiate here, we're talking about both of these cases now?

A. Yes.

JUDGE: You understand that you have right to an attorney and you and your attorney have a right to be in court when this matter is heard?

A. Yes.

JUDGE: You understand that you have a right to call witnesses at any hearing or trial in either of these cases and have them subpoeaned and have the Sheriff serve the subpoena and require the people to come in and testify on your behalf?

A. Yes sir.

JUDGE: You understand that you have a right to confront all witnesses brought by the state in these matters? Watch them, listen to them testify and cross-examine them if you so desire?

A. Yes sir.

JUDGE: You understand that you have a right to file a motion for change of venue from the county and you have a right to file a motion for a change of venue from the judge, do you understand that?

A. Yes.

JUDGE: Do you understand that if you're convicted in these matters, you'd have a right to appeal to a higher court at Indianapolis with hopes of getting your conviction reversed and getting a new trial?

A. Yes.

JUDGE: You understand in these cases Mr. Ramirez, you're presumed to be innocent at this time? Do you understand you have the presumption of innocence?

A. Yes.

JUDGE: And the only way that can be overcome is for the state to prove you guilty beyond a reasonable doubt?

A. Yes.

JUDGE: And that means if there's a jury, the state would have to so convince every member of that jury of

your guilt beyond a reasonable doubt before you could be found guilty?

A. Yes.

JUDGE: And if there's no jury, the state would have to so convince the Judge of your guilt beyond a reasonable doubt, do you understand that?

A. Yes.

JUDGE: And if there is a jury trial in any of these cases, you would have twelve people selected from our jury list at the time of the trial to be on your jury, do you understand that?

A. Yes sir.

JUDGE: And selecting these twelve people would be accomplished in a process joined in by you, your attorney, the prosecutor and the Judge, do you understand that?

A. Yes sir.

JUDGE: Did anybody threaten you, harm you or injure you in any way to get you to change your plea?

A. No sir.

JUDGE: Did anybody promise you anything more than what is contained in the Recommendation for Plea Bargain to get you to change your plea?

A. No sir.

JUDGE: With reference to the plea bargain, you understand that the court is not a part of this agreement between you and your attorney and the prosecutor right now?

A. Yes sir.

JUDGE: This is your signature? On the Recommendation of Plea Bargain?

A. Yes, it is.

JUDGE: Did you read the Recommendation of Plea Bargain before you signed it?

A. Yes sir.

JUDGE: And did you talk to your attorney about it?

A. I did.

JUDGE: You think you understand it?

A. Yes sir.

JUDGE: It says you intend to plead guilty to Count I. I'm not sure it says that, but that's what your attorney says, is that your understanding?

A. Yes.

MR. WELKE: Yes, Judge.

JUDGE: All right, Count I in 424 and plead guilty in 427 and 428 would be dismissed. You'd get 5 years in 424, and 2 years in 427, sentences to run consecutively.

MR. SCRUGGS: Concurrently, Your Honor.

JUDGE: Right, concurrently, together. Sentences to be suspended. You'd be placed on probation for four years. Do you understand that? That's your understanding of what it is?

A. Yes.

JUDGE: And in addition you would agree to waive your constitutional right against search and seizure as to the probation department. That's what you want to do in this case, is that right?

A. Yes sir.

JUDGE: You understand that what we'd be doing here in referring you and the Recommendation of Plea Bargain to the probation office, and Mr. Mills is here from that office today, and he would probably talk to you or somebody else from the office would about these cases. About yourself, your interests, your education, your work, your family, any past criminal record, a lot of other things, write up a report and send it to me. From that report and from this case file, I would decide whether or not to accept the plea bargain, do you understand that so far?

A. Yes sir.

JUDGE: If the plea bargain is accepted, you will be sentenced according to the agreement, do you understand that?

A. Yes.

JUDGE: If it's not accepted, you wouldn't be held to your intention to plead guilty, do you understand that?

A. Yes sir.

JUDGE: From me reading these statutes on penalties, you understand the potential penalties?

A. Yes sir.

JUDGE: You understand that if we were to proceed along the terms of this plea bargain, you'd be placed on probation for four years, and you would have to live under some rules of probation, you understand that?

A. Yes sir.

JUDGE: And if you didn't do it properly, you would be subject to the prosecutor or the probation office or the court requesting a hearing on revocation of probation. And if you lost that you might have to serve these two sentences, the five years and the two years, concurrently, do you understand that?

A. Yes sir.

JUDGE: Now, if you plead guilty you understand that you're not going to have a trial, either by court or by jury, you're waiving a trial, you understand that?

A. Yes sir.

JUDGE: And if you're not going to have a trial, you're waiving all your rights that you would have at trial by pleading guilty, do you understand that?

A. Yes.

JUDGE: You wouldn't have the opportunity to call witnesses in to testify and have them subpoeaned and require them to come in and testify, you understand that, if you plead guilty?

A. Un huh.

JUDGE: You understand that you and your attorney would not have a right to confront the state's witnesses at trial, watch them, listen to them and cross-examine them, if you plead guilty, do you understand that?

A. Yes.

JUDGE: You understand if you plead guilty, you're waiving your presumption of innocence? You're not going to have that presumption if you plead guilty?

A. Yes.

JUDGE: You understand that you would be waiving your right to appeal any error that might occur at trial if you plead guilty?

A. Yes.

JUDGE: You understand you're waiving your rights such as they are today to change of venue from the county and from the judge if you plead guilty?

A. Yes.

JUDGE: You understand that the state is not going to have to prove you guilty beyond a reasonable doubt if you plead guilty?

A. Yes.

JUDGE: You understand that you would be admitting to the allegations contained in Count I of Cause No. 424 and for the allegations contained in 427 if you plead guilty?

A. Yes.

JUDGE: And you are admitting to those facts and allegations, is that right?

A. Yes.

JUDGE: How far did you go in school, Mr. Ramirez?

A. I gradudated.

JUDGE: High school?

A. Yes.

JUDGE: So you understand English and you're able to read and write it then?

A. Yes.

JUDGE: Are you satisfied with Mr. Scruggs representation of you to date?

A. Yes.

JUDGE: You understand that if we have a trial or trials of these matters that you have, you don't have to testify, you have a right to remain silent, you understand that?

A. Yes.

JUDGE: And if you plead guilty, you're waiving that right to remain silent because in effect you're saying I did it, you don't have to prove it, you understand that?

A. Yes.

JUDGE: Do you have any questions, Mr. Ramirez, about any of these things that we've mentioned or anything else about this case that you would like to ask your attorney first or me?

A. No.

JUDGE: No, all right. Mr. Welke, do you want any other questions asked at this time pertaining to rights?

MR. WELKE: No sir.

JUDGE: Mr. Scruggs, do you know of any reason now that Mr. Ramirez should not proceed with this Recommendation of Plea Bargain?

MR. SCRUGGS: No, Your Honor.

JUDGE: We'll refer the Recommendation of Plea Bargain then to the probation office and ask for a presentence investigation report and take the request for change of plea, you also requested to withdraw your request for jury trial, I assume?

MR. SCRUGGS: Yes, Judge.

JUDGE: We'll take that under advisement, take the Recommendation of Plea Bargain request under advisement set those matters to-ether with potential sentencing for December 6th at 1:30, is that acceptable?

MR. SCRUGGS: Yes, that's fine. 1:30?

JUDGE: Yes. Ok, that's all, thank you.

AND NO FURTHER EVIDENCE WAS PRESENTED IN THIS CAUSE ON THIS DATE.

CAUSE 424—COURT REJECTS RECOMMENDATION FOR PLEA BARGAIN; REQUEST FOR JURY TRIAL. DECEMBER 14, 1979. (139)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 14th day of December, 1979 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Comes now State of Indiana and appears in open Court by Curtis Welke.

Comes now the defendant and appears in open Court in person and with Charles Scruggs.

Joanna Keller of the Adult Probation Department is present.

Court now finds that the Recommendation of Plea Bargain filed heretofore herein should be and is hereby rejected by the Court.

Defendant now requests jury trial.

Court now sets jury trial at 9:30 A.M., March 6, 1980.

* * * *

CAUSE 424—HEARING DECEMBER 14, 1979, WHEREIN COURT REJECTS PLEA BARGAIN. (495-498)

JUDGE: All right, in criminal causes 424 and 427, State versus Patrick Ramirez, the record will show Mr. Curtis Welke appears for the State. The defendant appears in person and his attorney, Mr. Charles Scruggs. The matter, and I also need to note that Mrs. Keller of the probation office has furnished the court with a presentence investigation report which the court has read and considered with reference to the recommendation of plea bargain which was filed in this case. The presentence investigation was submitted by Mr. Cox, and Mr. Cox can not recommend the plea bargain due to Mr. Ramirez's opinions and statements indicated to Mr. Cox about his guilt and hesitancy about signing the plea bargain and perhaps other reasons. Due to the presentence investigation report being as it is and due to the numerous charges here, the court finds that the plea bargain should be rejected and not accepted. Mr. Scruggs, do you have any motions to make at this time or do you wish to continue the matters to talk to your client and decide what you want to do?

MR. SCRUGGS: No, Your Honor, we're prepared to proceed and we would ask the court that these matters be set down for trial as soon as the court would have an opportunity to hear them. We are prepared to go ahead with trial. I think most of the discovery has been completed. I think I have just about everything I need.

JUDGE: All right, fine. Mr. Welke, I've got the two cards here, 424 and 427. The Recommendation of Plea Bargain also mentions 428 which I have pulled and have over to the side. I need your suggestion and Mr. Scruggs' suggestion on how many settings we need, if we need two or three, which do you want to set first?

MR. WELKE: I believe all three cause numbers would need different settings Your Honor. As far as preference

of timewise, they're all unrelated so it makes no difference to the State.

JUDGE: All right, fine. We'll set 424 first since it was filed first.

MR. SCRUGGS: I will be filing a Motion to Suppress the evidence in that cause, Your Honor, but that shouldn't interfere with the trial date.

JUDGE: 424?

MR. SCRUGGS: Right.

JUDGE: Generally speaking, do either one of you have a problem with a February setting?

MR. WELKE: State does not.

MR. SCRUGGS: No, Judge.

JUDGE: February 14.

MR. WELKE: Good.

MR. SCRUGGS: Judge, I'm going to be in Aspen that week.

JUDGE: Is that the northern district or the southern district?

MR. SCRUGGS: Western District.

JUDGE: Well, what about the 19th?

MR. WELKE: I have another setting on that date, Judge, it would be bad.

JUDGE: Ok. What about the 21st, is that any better?

MR. SCRUGGS: I've got a case in Anderson on the 21st, State versus Glen Williams.

JUDGE: March 6?

MR. SCRUGGS: March the 6th?

JUDGE: Yes sir. That's 424. March 20 on 427. Is that acceptable?

MR. SCRUGGS: Ok. Yes, it is.

JUDGE: Ok.

MR. SCRUGGS: Judge, why don't we withhold setting the other three cases pending the outcome of these two cases. I would think that after going through two ju-y trials, he might have cause for a change of venue from the county at that point anyway.

MR. WELKE: State would just as soon set a date, Judge, and cross that bridge when we come to it.

MR. SCRUGGS: That's all right with me.

JUDGE: Well, I've only got one other card here and I'm going to set that for the 27th of March, 428. Mr. Ramirez, if you change your address or your work or your telephone number, you let Mr. Scruggs know so if he needs to get in touch with you, he might have to talk to you and need to get ahold of you today, you know, rather than next week. So, he needs to know where you are. Ok, that's all.

AND NO FURTHER HEARING WAS CONDUCTED IN THIS CAUSE ON THIS DATE.

CAUSE 470—INFORMATION DATED FEBRUARY 19, 1980, FOR DEALING IN MARIJUANA. (235-236)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant
SGT. JACK ADAMS

Subscribed and sworn to before me this 6th day of February, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me /s/ Curtis C. Welke, Deputy Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant
SGT. JACK ADAMS

Subscribed and sworn to before me this 28th day of January, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me, /s/Curtis C. Welke, Deputy, Prosecuting Attorney, 62nd Judicial Circuit.

List of Witnesses on Reverse Side

CAUSE 424—RECOMMENDATION FOR PLEA BARGAIN. JULY 23, 1981. (157-160)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 23rd day of July, 1981 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Recommendation for Plea Bargain filed, which recommendation is in words and figures as follows: (H.I.) (157-160)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424

STATE OF INDIANA

vs

PATRICK RAMIREZ

RECOMMENDATION OF PLEA BARGAIN

Comes now the State of Indiana by Deputy Prosecuting Attorney, the Defendant, Patrick Ramirez, and counsel for Defendant, Jeffrey A. Lockwood, and files Recommendation of Plea Bargain as follows, to-wit:

1. The Prosecutor anticipates that the Defendant, Patrick Ramirez, intends to enter a plea of guilty to, Count I herein, Dealing in a Schedule IV Controlled Substance, a Class C felony.

2. That said recommendation is filed with the Court prior to entry of above plea.

3. That said recommendation is as follows:

a. Defendant will receive a sentence to the Indiana Department of Corrections for a period of five (5) years, committed.

b. Defendant agrees to waive his rights to sentence modification under I.C. 35-1a-18.

c. Defendant agrees to dismiss his appeal now pending in Howard Superior Court, Div. II, Cause #427.

d. The State of Indiana agrees to dismiss all other counts now pending in this Action, and all other causes of action now pending in Howard County. The State further agrees not to file any additional counts in the cases now pending in Howard County.

e. The State further recommends that Defendant's sentence be served concurrently with his sentence in Cause No. 427 and with the sentence he is presently serving in the State of Michigan.

4. That Defendant states to the Court that said recommendation is made of his own free and voluntary act and that no one has threatened or promised him anything other than that contained herein. Further that Defendant fully understands the consequences of this recommendation.

5. The Defendant has been advised and understands that this Court is not bound by this recommendation, however the Defendant also understands that if this recommendation is rejected by the Court, it must be so rejected before the case is tried.

STATE OF INDIANA BY:

/s/ Curtis C. Welke
Deputy Prosecuting Attorney
CURTIS C. WELKE

/s/ Patrick Ramirez
Defendant
PATRICK RAMIREZ

/s/ Jeffrey A. Lockwood
Attorney for Defendant
JEFFREY A. LOCKWOOD

Defendant appears with counsel, Jeff Lockwood.

State appears by Robert Bly.

Defendant withdraws request for jury trial and plea of not guilty.

Defendant advised of terms of plea bargain.

Referred to the probation department for presentence investigation report.

Ruling set 1:30 P.M. August 17, 1981.

Defendant requests appeal bond be released.

Defendant's motion granted.

Appeal bond released.

* * * *

[Filed Apr. 14, 1983]

CAUSE 424—MOTION DATED AUGUST 17, 1981, TO WITHDRAW PLEA BARGAIN. (192)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 17th day of August, 1981 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Defendant appears in person and by counsel and moves to withdraw plea bargain and be set for jury trial.

Granted.

Jury trial set for December 10, 1981 at 9:30 A.M.

Omnibus hearing set for 10-14-81 at 3:00 P.M.

* * * *

[Filed Apr. 14, 1983]

CAUSE 424—HEARING AUGUST 17, 1981. PETITIONER MOVES TO WITHDRAW PLEA BARGAIN. (526-531)

JUDGE: All right, Mr. Bly, are you ready?

MR. BLY: Yes, Your Honor.

JUDGE: All right, this is 424, State of Indiana versus Pat Ramirez. The record will show that Mr. Bly appears for the State. The defendant appears in person, by his counsel, Mr. Lockwood. Court has received a presentence investigation report and considers it. Mr. Smith of the probation office is present. Mr. Lockwood, it's my understanding that your client has something to say or you have something to say.

MR. LOCKWOOD: My understanding, Your Honor, is Mr. Ramirez does not wish to go forward with the plea agreement. He has expressed to me his desire to request of the court to withdraw his previous plea of guilty that was entered the last time we were in court and ask the court to reinstate his plea of not guilty and reset it for trial. That's the communication I've had from my client.

JUDGE: Mr. Lockwood, he didn't, he just requested to change his plea. I don't think that was done according to the record here.

JUDGE: And so we don't have that to undoe. Is that your position, Mr. Ramirez?

A. Yes, it is, Your Honor.

JUDGE: All right, do you want to withdraw your agreement on the request for plea bargain?

A. Yes.

JUDGE: The recommendation for plea bargain, you want to withdraw that and you wish to maintain your not guilty plea and have the matter set for jury trial again, is that right?

A. Yes.

JUDGE: All right. Mr. Bly, Anything?

MR. BLY: Your Honor, the State has nothing, except we would in view of this, the court accepts this, the State would move for an omnibus hearing and trial date.

JUDGE: Well, very well, we'll, I think Mr. Ramirez that you have a right to do this at this time. I haven't ruled on it. So, we'll show that that is withdrawn and your not guilty plea is still in effect. And your request for jury trial is still in effect, and we'll set it for trial here. It looks to me that Mr. Lockwood, that November 17th would be a good day, for jury trial.

MR. LOCKWOOD: I am presently scheduled to try a jury trial in Madison Circuit Court that date.

JUDGE: Ok.

MR. LOCKWOOD: I might say, Your Honor, that in view of the fact that my signature appears on the Recommendation, my client's and Mr. Welke, and I also might say that in light of the fact that I counseled with Pat concerning this plea agreement on numerous occasions, in Michigan, and it stipulates things that Mr. Ramirez is no longer able to go along with. Perhaps, it should be determined whether or not I am going to continue in my representation. I don't know how he feels about that at this time. And frankly, I'm not sure how I feel.

JUDGE: Well, you know, that's something that you have to determine.

MR. LOCKWOOD: And I also understand that this is certainly in the best interest of this proceeding to get this thing set for trial and I'd be more than happy to work together to get it set.

JUDGE: I understand. People get more attorneys and we just have to face that when it comes, if it does. All right, I'm suggesting December the 10th for jury trial in this case 424. Is that all right with you, Mr. Lockwood?

MR. LOCKWOOD: Yes sir.

JUDGE: Mr. Bly?

MR. BLY: Yes, Your Honor.

JUDGE: Ok, we'll set it for jury trial December the 10th at 9:30. Anything else Mr. Bly?

MR. BLY: Well, Your Honor, I would and I've talked with defense counsel about an omnibus hearing for the purpose of any motion which the defendant may want to file. In view of the fact that the trial is set somewhat in advance, possibly we could work in a date of an afternoon for this.

JUDGE: About when are you suggesting, October?

MR. BLY: October I think would give the defendant sufficient time to undertake whatever discovery they might have. Also it would permit Mr. Lockwood to make his determination.

JUDGE: What about October 14th?

MR. BLY: That's fine with me.

MR. LOCKWOOD: Well, I have a potential conflict on that date, but in view of the fact that the trial date is set up quite a way, I think if we can, go ahead and set it and as soon as I find out . . .

JUDGE: Like 3:00 in the afternoon.

MR. LOCKWOOD: 3:00, that'd be fine.

JUDGE: Ok, we'll set omnibus date for October 14 at 3:00.

MR. LOCKWOOD: My potential conflict is a jury trial in Grant Circuit Court. But it's set as a second choice.

JUDGE: Ok, that's all.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

CAUSE 424—MOTION DATED JANUARY 18, 1982 TO DISMISS. (210-216)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 18th day of January, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Niles Stanton appears for Defendant and files Motion to Dismiss together with Memorandum in Support Thereof, which motion and memorandum are in words and figures as follows: (H.I.)

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

MOTION TO DISMISS

Defendant Patrick Ramirez, by counsel, respectfully moves the Court to dismiss the charges against the defendant contained in Cause No. 424. In support of his motion defendant states as follows:

1. On March 16, 1981, the Howard County Prosecutor's Office lodged a detainer against the defendant who was then incarcerated in the State Prison of Southern Michigan.

2. The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976)

3. The detainer was based *solely* on Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

4. The aforementioned detainer is the only detainer from Indiana which was lodged against the defendant. (*See* "Affidavit of Defendant" and defendant's exhibits attached hereto and incorporated herein.)

5. The State now seeks to prosecute the defendant on Cause No. 424, which consists of three (3) counts of dealing in a Schedule IV controlled substance.

6. The events charged in Cause No. 424 are not a part of the same transaction as those charged in Cause No. 470. (*See* "Memorandum of Law" attached hereto and incorporated herein.)

7. Indiana law prohibits the prosecution from trying the defendant on Cause No. 424 since no valid detainer was lodged on those charges and since the events which are alleged in Cause No. 424 do not arise out of the same transaction as those alleged in Cause No. 470. (*See* "Memorandum of Law" attached hereto and incorporated herein.)

WHEREFORE, defendant Patrick Ramirez, by counsel, respectfully moves the Court to dismiss the charges against him contained in Cause No. 424.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion to Dismiss" has been served upon Mr. Fred. G. Osborn, Howard County Prosecutor, Courthouse, Kokomo, Indiana 46901 by United States mail this 15th day of January, 1982.

/s/ Nile Stanton
NILE STANTON

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

VERIFICATION

I hereby affirm that the foregoing representations are true, under the penalties for perjury, to the best of my knowledge.

/s/ Patrick Ramirez
PATRICK RAMIREZ

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

SUBSCRIBED AND SWORN to before me a Notary Public for said State and County, this () day of January, 1982.

/s/ Signature illegible
Notary Public
Resident of Howard County

My Commission expires:

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

AFFIDAVIT OF DEFENDANT

I, Patrick Ramirez, being first duly sworn upon my oath, depose and say as follows:

1. During my incarceration at the state prison of Southern Michigan, I was informed of only one (1) detainer being lodged against me from the State of Indiana.
2. That detainer was based upon Cause No. 470 from Howard County; two counts of dealing in marijuana and a bench warrant issued on those charges.
3. No other detainer from Howard County, Indiana, was lodged against me.

/s/ Patrick Ramirez
PATRICK RAMIREZ

[Filed Apr. 14, 1983]

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976). On March 16, 1981, the prosecutor's office lodged a detainer against the defendant who was then incarcerated at the State Prison of Southern Michigan. The detainer was based solely upon Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

The prosecution is not satisfied with using its temporary custody of the defendant for trying the defendant for Cause No. 470. The prosecution now seeks to try the defendant for three (3) counts of dealing in a Schedule IV controlled substance. The law in Indiana,

however, clearly prohibits the prosecution from carrying out its intended course of action. Subparagraph (d) of Article 5 of the Agreement on Detainers provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, information of [or] complaints *which form the basis of the detainer* or detainers or for prosecution of any other charge or charges *arising out of the same transaction.*" (Emphasis added). *See*, Ind. Code § 35-2.1-2-4 (1976). The import of this language is clear and must be interpreted in accordance with its plain meaning. *Shewmaker v. State*, (1956) 236 Ind. 49, 138 N.E.2d 290.

Prosecution of Cause No. 424 clearly does not fall within the purview of the State's authority over the defendant. The State did not lodge a detainer based upon Cause No. 424 against the defendant. (*See*, Defendant's Exhibits 1, 2 and 3 attached hereto and incorporated herein. It is also apparent that the charges in Cause No. 424 did not arise "out of the same transaction" which led to Cause No. 470. Cause No. 470 contains two (2) counts alleging dealing in marijuana. The alleged deliveries took place on December 17, 1979, and on December 21, 1979. The alleged acts of Cause No. 424 are not connected with those of Cause No. 470. Cause No. 424 is comprised of three (3) counts of dealing in a Class IV Controlled Substance (diazepam). The alleged deliveries of diazepam are to have taken place some nine months before the alleged delivery of marijuana in Cause No. 470.

There is no detainer based upon Cause No. 424. Cause No. 424 and Cause No. 470 did not arise out of the same transaction. The Interstate Agreement on Detainers cannot be interpreted by an stretch of the imagination to give the state authority to prosecute the defendant for Cause No. 424. The defendant therefore moves this

Court to dismiss the charges contained in Cause No. 424.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
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(317) 636-3300
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of Law has been served upon Mr. Fred G. Osborn, Howard County Prosecutor, Courthouse, Kokomo, Indiana 46901 by United States mail this 15th day of January, 1982.

/s/ Nile Stanton
NILE STANTON

CAUSE 424—HEARING JANUARY 25, 1982.
MOTION TO DISMISS. (552-600)

JUDGE: All right, we're on the record on 424, Criminal, State versus Patrick Ramirez. The record will show that Mr. Bly, Mr. Bob Bly appears for the State. Mr. David Arthur from the Attorney General's office appears, and Mr. Kevin McShane, Attorney at Law from Indianapolis and Mr. Stanton's office, appears for the Defendant. Mr. Ramirez also appears. Mr. Stanton filed several days ago a motion to dismiss in 424. And since this matter is set for trial on Thursday, I set it for argument this morning. I'd ask you to proceed, Mr. McShane, if you're ready.

MR. MCSHANE: Yes, thank you, Your Honor. Mr. Arthur just indicated to me that he had some documents that he wished to place into evidence. I had planned on doing the same myself.

JUDGE: That's fine. If you have something that you want to place into evidence. Normally, on a motion like this we only have argument on it, so I picked the word argument instead of hearing.

MR. McSHANE: Yes, Your Honor, I believe there are some documents that we would like to introduce, and also I want to put Mr. Ramirez under oath.

JUDGE: All right, sure, sure.

You might want to put your documents in by stipulation then.

MR. McSHANE: At this time, Your Honor, the defendant in support of his Motion to Dismiss would offer into evidence Defendant's Exhibits #1, #2 and #3 pursuant to stipulation with the State.

JUDGE: All right, be admitted. All right, and you want your client sworn to testify, is that right?

MR. McSHANE: Yes, Your Honor. There are two other documents which were made exhibits to our Motion, letters we received in our law office in Indianapolis.

JUDGE: From Michigan?

MR. McSHANE: That's correct, Your Honor. I would at least like to know that they be made a part of the record at this time and so move, since they were filed.

JUDGE: Fine.

MR. McSHANE: Along with an affidavit pertaining to them, I believe.

JUDGE: Any objection to that?

MR. BLY: The only objection the State would have, Your Honor, is in the event, and I've discussed this with Mr. McShane, along with that so that the court has total access to what occurred here, there is a letter from Mr. Stanton to the manager of the General Offices Services, Department of Corrections in Michigan under a date of December 11, 1981. I would like this also admitted into evidence so that the court can see what was requested by Mr. Stanton.

MR. McSHANE: No objection to that at all, Your Honor. We would make that a defendant's exhibit.

JUDGE: All right, we'll make that an exhibit and we'll also consider the two letters attached to the Motion to Dismiss.

MR. McSHANE: I believe we're ready to proceed, Your Honor. At this time we would call the defendant, Patrick Ramirez.

JUDGE: All right, Mr. Ramirez, would you stand and raise your right hand and be sworn? Do you swear that you'll tell the truth and nothing but the truth in this matter so help you God?

A I do.

JUDGE: Ok, just have a seat right over here please.

PATRICK RAMIREZ,

after being first duly sworn to tell the truth in this matter, deposes and says:

DIRECT EXAMINATION

QUESTIONS BY MR. KEVIN McSHANE:

Q Would you state your name for the record please, sir?

A Patrick Ramirez.

Q And are you the same Patrick Ramirez who is the defendant in Cause No. 424 and 470 presently pending before this court?

A I am.

Q Mr. Ramirez, do you know at this time approximately both of these cases have been pending?

A March 20, 1979 on 424, and February 28, 1980.

Q And directing your attention to earlier this year, approximately March of 1981, where did you reside?

A Southern Michigan Prison at Jackson.

JUDGE: I'm sorry. What date?

MR. McSHANE: Around March of 1981, Your Honor.

Q Was that correct, sir?

A Yes, Southern Michigan Prison at Jackson.

Q And did there come a time when you received notice through the prison administration up in Jackson about the pending charges against you here in Indiana?

A Yes, I received a detainer against me on March 16th or 19th. One of the two dates. At that time I appeared in front of the counsel and they told me they had affidavits and probable cause. And a bench warrant and two indictments of dealing in marijuana. One on the 17th and one was on the 21st of 1979.

Q Representation made to you sir, what did they charges pertain to?

A Yes, it was Cause No. 470, dealing in marijuana.

Q Ok, was there any, at that time, oral notice given to you about the desire of the State of Indiana as communicated through authorities in the State of Michigan to prosecute you on three counts of Dealing in a Schedule IV Controlled Substance?

A No, there wasn't.

Q Did any of the documents which were shown to you pertain to the charges in Cause No. 470, contain any information, quote, any criminal information against you pertaining to charges of Dealing in a Schedule IV Controlled Substances?

A No, there wasn't.

Q Did you ever sign any waiver of extradition?

A Yes, I did.

Q Pertaining to which charges?

A I believe Sandra Phelps was the person that come from the main officer, from the warden's office. And she stated what the charges were. They tell you what they are. First of all they ask you if you can talk English, you understand what's going on. And I said no, I really didn't at that time. And she said well, you have a hearing before the U.S. Supreme Court notice that if you feel like you don't want to be going back to Indiana, or you want to fight it, you'll have a hearing before that. So, she brought the indictments and she brought the Clerk's Certificate. And she said that you'll be going back to Indiana on Cause No. 470, Dealing in Marijuana, bond set at $50,000. At that time that's when she told me. So, she told me to think about it. Two or three days later I talked to an attorney and he told me he says you've got to go back to Indiana or you can fight extradition. You'll be charged with Dealing in Marijuana. And at that time I said well, no problem, I guess I'll sign it. So, I signed it.

Q Mr. Ramirez, at that time was there ever any mention of a detainer being lodged against you and the State of Michigan pertaining to three counts of Dealing in a Schedule IV Controlled Substance?

A No, the only detainer was 470, marijuana, that's the only detainer they had.

Q Mr. Ramirez, when you were asked to formally waive extradition by the authorities at the prison in

Jackson, Michigan, were you asked to sign any formal waiver forms?

A Yes, I had to sign the waiver form in front of Sandra Phelps, I believe her name was. She was from the warden's office.

Q I now hand you what's been marked for identification as Defendant's Exhibit #5, and I'm going to ask you if you recognize it?

A Yes, this is what I signed on the 19th. And Mr. Barry Nintz, that is the warden.

Q Would you look at the second page, please sir. Do you recognize the signature on that page?

A Yes, that's mine. That's the attachment form showing that.

Q Is that the original of the form, Mr. Ramirez, or is that a photocopy?

A That's a photocopy.

Q Do you know what class felonies, Mr. Ramirez, the Dealing in Marijuana charges are in Cause No. 470?

A Sure, the statute reads in Indiana, the class in marijuana is Class D, and the Schedule IV was Class C.

Q Now, with reference to the Schedule IV, do you know which class felony that is, you just answered my question?

A Class C.

Q Do you know what the sentences are?

A Under the statute, I believe it was four years.

Q Now, Mr. Ramirez, had you known that the State of Indiana was seeking to extradite you for prosecution under the Schedule IV counts in Cause No. 424, would you have voluntarily waived extradition from Michigan, or would you have sought legal counsel and perhaps a hearing on that?

A I definitely would have had a hearing.

Q In, was it your opinion at the time that it was in your best interests to return here to Indiana on the marijuana charges?

A At that time I thought to co-counsel in Michigan, that the best thing would come back on the charges of dealing in marijuana due to the fact that the State's witness was filed two charges in theft, and that would have made him an habitual criminal. And he said that they probably wouldn't file them charges.

Q Prior to executing on the waiver, that's reflected, strike that.

MR. BLY: Are you going to offer it?

MR. McSHANE: Yes.

MR. BLY: I'm going to object to it.

MR. McSHANE: Go ahead.

MR. BLY: Unless I can ask a few questions.

MR. McSHANE: Sure.

MR. BLY QUESTIONS MR. RAMIREZ ON PRELIMINARY QUESTIONS:

Q Mr. Ramirez, Defendant's Exhibit #5 that you're seeking to introduce.

A Yes.

Q Are you calling this a waiver?

A Waiver?

Q Yes.

A No. Which one you talking about?

Q I'm talking about the whole thing.

A I'm talking about this right here.

Q What it's attached to?

A No, it's the bottom page. It's the single, they're stapled. It's right here. The second page.

Q Well, then Exhibit #5 is only the front page?

A I don't know what exhibit it is, sir.

MR. McSHANE: Yes, I was going to offer it and several portions at the time you asked your preliminary questions. I'll go through that right now.

MR. BLY: And this would be 6 here?

MR. McSHANE: No, I've made this 5 in two pieces.

MR. BLY: 5A and 5B?
MR. McSHANE: Yes.
MR. BLY: Ok.

MR. BLY CONTINUES WITH PRELIMINARY QUESTIONS:

Q On 5B which would be the second page, your attorney has indicated will be 5B, are you saying that that is the waiver that you signed?

A Yes, it is.

MR. BLY: Your Honor, the State has no objection to the introduction of Defendant's Exhibits 5A and 5B. However, the State would at this time object to the reference to 5B by the defendant or to the court considering it as a waiver of anything since the clear reading of the document does not show that the defendant waived anything. It merely states what it says on its face.

JUDGE: All right.

MR. McSHANE: Well, Your Honor, I think that we can call it what we want, and the State can call it what they want, and the court can decide what it thinks.

JUDGE: I think you're right.

MR. McSHANE: We'd offer at this time Defendant's 5A.

JUDGE: It will be admitted.

Q Did you sign any other documents, Mr. Ramirez, besides Defendant's Exhibit 5B that I just showed you?

A No, that was the only one I had to file, signed, was B, and if I didn't, you know, if I wanted a hearing then I waived my rights.

Q You never did have a hearing did you?

A No, because I signed.

Q You just signed?

A I waived my rights, yeah.

Q Did you waive your rights with respect to the Schedule IV counts as charged in Cause No. 424?

A Well, at the time no one had no knowledge of it.

Q Had anybody informed you?

A There was no knowledge in Michigan whatsoever.

Q Had anybody asked you if you wished to waive the extradition or whether you wished an extradition hearing in the State of Michigan on those counts?

A No, because the only reason why they brought me, due to the fact that the Clerk's certificate was just stated, 470, and at that time when I talked to an attorney, he told me that's the only charges I would be charged with. If that wasn't the case they could add on murder, kidnapping on the way down. He set you'll just be going to court on 470. Because . . .

Q Sir, you did consult counsel prior to waiving extradition?

A Yes, I did.

Q And at that time, between you and your counsel, was any mention made of any of the counts at all that are contained in Cause No. 424 presently before this court?

A No, because they never sent no record of it to Jackson.

Q And once more, sir, if those counts had been part and parcel to the detainer documents filed by the State of Indiana with the officials in the State of Michigan, would you have, in fact, waived extradition pertaining . . .

MR. BLY: I'm going to object to the form of the question as to what the defendant would or would not have done.

A I stated what I would do.

MR. McSHANE: Your Honor, it's apparent, I believe, from the documents that are already into evidence, and from Mr. Ramirez's testimony up to this point that he waived some constitutional rights in reliance on certain documents filed by the State of Indiana with officials in the State Prison in Jackson, Michigan. And it was based on this reliance on what rights he was giving up at the time that I'm asking the question. The court can't know what his state of mind was at the time un-

less we ask him. He's competent to testify as to his own state of mind.

MR. BLY: Your Honor, I still maintain my objection for the same reasons I set forth. Asking Mr. Ramirez what he would have done or wouldn't have done belies what he, in fact, did do. I think the documents speak for themselves. It can only be a self-serving statement.

JUDGE: Well, are you saying the document are cover anything more than Mr. McShane is saying they cover?

MR. BLY: The question is, Your Honor, what would you have done. That's the objection. What would you have done.

JUDGE: I understand.

MR. BLY: What would you have done five months ago. The answer to that question, forecasts a self-serving answer. We would object to the question.

MR. McSHANE: Your Honor, we would admit.

JUDGE: Just a minute, Mr. Bly, are you saying that these documents that Mr. McShane has put into evidence, particularly 5 pertains to anything more than what he says they pertain to?

MR. BLY: Not necessarily, Judge.

JUDGE: Yes, ok, well, I saw Mr. Arthur shake his head back there at one point that made me think maybe he did. What about it, Mr. Arthur, do you think they mean anything more than Mr. McShane?

MR. ARTHUR: What I was shaking my head about, Your Honor, is that there are no constitutional rights under the interstate agreement on detainers as is made clear in Adams vs. Kyler set by the Supreme Court last year. It's an entirely a question of statutory law. Therefore, the question of waiver and the standard to be applied is considerably less than if there were any constitutional rights. And at that point the question of what he would have done becomes irrelevant. The only questions are what he did, since there does not have to be a knowing, voluntary intelligent waiver as there would be if there were constitutional rights involved.

JUDGE: So, you're wanting the court to take the position that it doesn't make any difference what the next answer is if there is a next answer, is that right?

MR. ARTHUR: That's correct.

MR. McSHANE: He's answered it once before anyway, Judge.

JUDGE: I thought he did too. We'll let him answer it. You may answer it.

A In all the confusion, I forgot the question.

JUDGE: I don't blame you.

Q Mr. Ramirez, would you have, in fact, formally waived extradition from the State of Michigan to the State of Indiana last March had you known that the state was seeking, the State of Indiana, was seeking to bring you down here to prosecute you for three C felonies being the counts in Cause No. 424 Dealing in a Schedule IV Controlled Substance?

A Yes, I would have fought it. I would never have returned to Indiana.

Q You would have at least fought it?

A I would have.

Q And invoked the statutory rights, not the constitutional ones that were attended on you in those circumstances?

A Right.

MR. McSHANE: That's all I have.

CROSS EXAMINATION

QUESTIONS BY MR. ROBERT BLY:

Q Mr. Ramirez, on the date that you received these documents in March, were you represented by an attorney here in Indiana?

A Yes, I was.

Q What was that attorney's name?

A Jeffrey Lockwood.

Q And Mr. Lockwood had authority to speak for you at that time? As your attorney?

A At that time?

Q Yes.

A I paid him. He was handling cases 427.

Q Was he handling any other cases?

A I paid him all the attorney fees and he was handling my appeal.

Q Was he handling 470 for you at the time?

A I reckon he was.

A Was he handling 424 for you at the time?

A I'm not sure on that one. I'm not sure.

Q Do you recall on July 23rd, I believe, submitting a plea bargain in this court?

A Yes, yes I have.

Q And does your signature appear on that plea bargain?

MR. McSHANE: Excuse me, counsel, I would ask leave to ask a preliminary question.

MR. BLY: Sure.

JUDGE: Go ahead.

MR. McSHANE QUESTIONS DEFENDANT ON PRELIMINARY QUESTION:

Q The plea bargain referred to by the prosecutor, Mr. Ramirez, ever executed? Did it ever take full force and effect?

A No, it didn't.

MR. McSHANE: Your Honor, at this time we would object to any reference to any plea negotiations which were never formally executed.

MR. BLY: Your Honor.

MR. McSHANE: Excuse me, counsel, Indiana statute provides that those are not to be admissible in court for any purpose whatsoever except when a court takes a guilty plea and imposes a sentence.

MR. BLY: Your Honor, I'm referring to the record only. I think the record speaks for itself. The court can check the record with respect to the executed plea bargain

as well as the docket sheet. I'm merely asked Mr. Ramirez if he signed that plea bargain. If that is his signature which appears on it in 424.

JUDGE: I'll let him answer if he signed one.

A Yes, I signed that on the 23rd of July.

Q And you appeared here in court, did you not?

A Yes, I did.

Q And if the court minutes would show that that was submitted, would you disagree with that?

A No, it's on record. It's on the docket sheet.

Q And you reappeared here on August the 17th, did you not?

A Yes sir.

Q And at that time you withdrew from the plea bargain, did you not?

A Yes, I did.

Q And that motion was granted, was it not?

A Yes, it was.

Q Ok, now, you make reference in your testimony that you received a detainer on March 16th, what did you really receive on March 16th, Mr. Ramirez?

A I received all the copies that you sent, that Fred Osborn signed and the detainer agreement between Indiana and Michigan with Mr. Nile from Michigan and Indiana, I don't believe I know, Marge Barker, that's her name, from the detainer from the Department of Corrections. They agreed to it, that I would come back to the State of Indiana on charges of dealing in marijuana, 470.

JUDGE: They meaning somebody in Michigan.

A No, the two parties from the Department of Corrections.

JUDGE: What departments?

A Two departments, the State of Michigan and the State of Indiana.

Q Mr. Ramirez, what did you receive on March 16th or thereabouts? Tell the court what you received?

A What did I receive?

Q Un huh.

A I received everything that they sent which had been Clerk's Certificate. It was the 19th or the 16th. Sometime in March. Ok. I don't know the date. I received the Clerk's certificate, the bench warrant, the two affidavits, probable cause.

Q What you received was a bench warrant, wasn't it?

A Yes.

Q And you received the Clerk's Certificate?

A Right.

Q You call that a detainer?

A No, I didn't call that a detainer.

Q You testified that it was a detainer, did you or did you not?

A No.

Q You did not receive a detainer then, you received a bench warrant and the Clerk's Certificate?

A Right.

Q Mr. Ramirez, I'm going to show you, I'm not going to show it as in evidence because it's in the file, a copy of something that's in the file in 470. Would you care to identify that?

A Yes, this is under Superior Court 2, Cause No. 470, it was filed on March 11, 1981.

Q What does it say?

A This motion set for trial by jury to come on March 12, 1981.

Q What's it titled?

A Stipulation of Continuance.

Q Is that signed by anyone?

A Signed by Jeffrey Lockwood and Curtis Welke.

Q Does anything else appear on there? Does it show when it was submitted to the court?

A Yes, it was filed on March 11th.

Q What year?

A 1981.

MR. BLY: I would call the court's attention to a Stipulation for Continuance which Mr. Ramirez has just identified in the file on 470.

MR. McSHANE: No objection to that, Your Honor. I would further call the court's attention to the fact that it's not signed by the defendant. For the record.

JUDGE: Fine.

Q Now, Mr. Ramirez, if you look at the docket sheet on 470 it would seem to show that your trial was set for April 15, 1980, would it not, I'm sorry, 1981, correction, March 26, 1981 at 1:30 on 470?

A Yes.

Q Did that trial go?

A No, it didn't.

Q Where were you on March 26, 1981?

A Department of Corrections, Jackson, Michigan.

Q Do you know why you weren't tried on 470 on March 26, 1981?

A No, I didn't.

Q Did you ask your attorney at that time?

A Well, I didn't see my attorney. The first time I seen him, I went in incarceration on November 19, 1980. I seen him January 23rd, to be exact, 1981. At that time he come to the Southern Michigan Prison.

Q That's Mr. Lockwood?

A That's correct, Mr. Lockwood, and told me at that time, Curtis Welke was the prosecuting attorney in the case and told me if I would plead guilty to all these charges, that I would do two years run concurrently, which would be one year, and that would be the whole situation on matters 470, 428, 424 and I would have to abandon the appeal which was in appeal court on 427.

Q But you signed the plea bargain, didn't you?

A No, I didn't. Because. . .

Q You didn't?

A Wait a minute, I'm talking, I said January of 1981. And that's when Curt Welke was the prosecutor. Well, then in April he come to see me. Mr. Lockwood

came to see me in April of 1981. At that time he informed me that Mr. Bly who took the prosecutor attorney's job, I mean, he was going to appear for the State and he come and told me, and I said well, what's the deal on the two years. And at that time he says that the two years was the deal between him and Mr. Welke. So, he said, well, they lodged a detainer. I guess you already know that so you'll be coming back to Kokomo, Indiana, Howard County. And I said well, whatever, you know, so I came back on July 21 of '81.

Q Now, you're telling the court that Mr. Lockwood and I had a conversation saying that the plea bargain that you and he had heretofor agreed to or what you and the State had agreed to was not applicable?

A Which one are you talking about, yours?

Q I'm talking about the one that was filed and signed by you?

A That was filed on the 17th. I mean, yeah, no it was the 23rd of July that it was filed. And I can state the reason why I didn't take, accepted the plea bargain.

JUDGE: I think you're talking about two different plea bargains.

A No, I'm just talking about one, sir, because the first one I never accepted because I never signed nothing, that was with Mr. Welke in January of '81.

JUDGE: How could that be the first one? You just said the other one was in '80.

A No, no, sir. The first plea bargain pertaining to these cases was in January, 1981, when Mr. Lockwood come to Southern Michigan Prison.

JUDGE: That was the two-year deal?

A That was the two-year deal and I'd do one year.

JUDGE: All right.

A Ok, and then the second one was July 23rd, 1981.

JUDGE: July what?

A 23rd, 1981. At that time I signed the plea bargain, but the reason I didn't accept the plea bargain cause I was supposed to appear in Court August 17, 1981. . .

JUDGE: Ok.

A Ok, that's when I appeared back in court. Well, on July 27, 1981, I had all my court papers from Michigan, well, according to the, when I went back to the jail my papers wasn't there, and there was a reason why they wasn't there. Well, I didn't know at the time so I filed and I have copy records that I filed that with records, and they sent all my records again. So, I contacted an attorney up there and he says all your papers are gone, and I said yes, they're gone. He said you know why and I said no I didn't know why. He said well, due to the fact the Clerk's Certificate is the whole key to that. When Mr. Howard signed that, he represents the courts. And it's also a document when Mr. Van Dorn signed it. And it states that you was coming back for case number 470, so someone didn't want you to have them so, I figured I was fighting for time, so I filed it and they sent it all back to me. Which I have at this time which I. . . .

JUDGE: Who sent it back to you?

A Department of corrections. I have photostatic copies.

JUDGE: Both of them?

A Both of them. They sent both of my records to me and I had to call them.

JUDGE: Ok, but then in August, it was August of '81, you said that you withdrew the plea bargain?

A August 17th to be exact.

Q Now, Mr. Ramirez, you've talked about two plea bargains, you've talked about oral agreements, what have you, maybe I ought to be a little more specific so that we understand that we're talking about the same thing, there have been two plea bargains filed in 424, have there not?

A Yes, I believe there was.

Q Ok, now there was one filed November 16, 1979, was there not?

A Correct.

Q Then there was the one that was filed last summer?

A Correct.

Q The discussion that you and your attorney thought that you had with Mr. Welke was not ever reduced to writing or was it?

A No, I was incarcerated. I don't know what Mr. Lockwood, spoke to Mr. Welke or whether he talked to the Joe Blow down the street. I don't know. This is what he's telling me. But I had nothing come down on paper is what I'm saying.

Q Your attorney didn't write to you and explain this to you?

A I said he come to visit me. This was oral face between me and him in consultation room and this is what he told me. Two years I'd do if I abandon the appeal and plead guilty to 4-something, 470.

Q Ok, Mr. Ramirez, when did you then appear in Indiana?

A What date that I arrived here?

Q Yes.

A I arrived here 4-21-81, I mean 7-21-81.

Q July the 21st, 1981?

A. Yes sir.

Q And you were brought here for what reason?

A Detainer.

Q Well, why was the detainer lodged, are you aware of that?

A Sure enough. It was lodged detainer against me in Howard County, Indiana, on the charges of Cause No. 470, Dealing in Marijuana, one and two.

Q Did you receive any other documents in Michigan?

A No sir, there was never no documents sent other than the ones, the Clerk's certificates, and the warrants, the bench warrant from this court, Superior Court 2 acting in 470.

Q But you did sign a plea bargain, and you did file it on July 23rd, did you not?

A I did.

Q And your attorney at that time, Mr. Lockwood, signed it, did he not?

A He did.

Q And you do recall sitting right here in court and asking the court to accept it, do you not?

A Pardon.

Q Well, strike that. You do recall filing it, don't you?

A Filing it, yes.

Q Do you recall what the cause number was on that?

A I can't hardly remember what the plea bargain was.

Q Would you like to see a copy of it from the court files or what have you?

A Yes, I'll see it.

Q Is that the document that I just made reference to?

A Un huh. I know what it is, to run concurrent with the State of Michigan.

Q Is that your signature?

A Yes, it is.

Q That is the document you filed here two days after you were brought here?

A Right.

Q And what is the cause number that appears on that?

A 424.

MR. BLY: State has no further questions of this witness.

MR. McSHANE: Couple more.

JUDGE: Sure.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. MC SHANE:

Q Mr. Ramirez, the plea bargain, plea agreement that was just shown to you by the prosecutor in Cause No. 424, that plea was never effectuated or accepted by the court?

A No.

Q Wasn't it, in fact, rejected by the court?

A No, I had on the 17th, I withdrew my withdrawal. I didn't want to accept it.

Q And what was granted?

A Yes, it was.

Q Whatever the State wants to call the documents that you saw in Michigan pertaining to the marijuana case, you in fact, signed the Defendant's 5B that I showed you?

A Yes, I did.

Q You, in fact, were brought from Michigan down to here, weren't you?

A Yes.

Q The prosecutor mentioned this March 26th trial date that was set at one time on Cause No. 424, is that your recollection of the date?

A Well, see, I had, I was incarcerated and I had no communication with lawyer that I had here. All I know that I paid him the money.

Q You had no reason to disagree with the prosecutor when he asked you whether that case was actually set for that day, did you? Did they bring you down for that day?

A No, they didn't, sir.

Q You didn't get any papers like you see before you today for that trial date, did you?

A No.

Q Were you free to leave the State of Michigan and travel down here on your own accord to come to court?

A No. No, I never received nothing.

Q Is it your testimony that you weren't aware of the trial date?

A No, I wasn't aware of it.

Q OK.

MR. McSHANE: That's all I have.

JUDGE: Ok, you may step down.

MR. McSHANE: The defendant rests on this motion, Your Honor.

JUDGE: Does the State have any evidence that you want to present, Mr. Bly?

MR. BLY: State has no evidence to offer other than the record.

JUDGE: All right.

MR. McSHANE: Brief argument, Your Honor.

JUDGE: Sure.

MR. McSHANE: I believe that our position is fairly well covered in the Motion and Memorandum. In particular, Your Honor, with respect to Article 5 of the interstate detainer act which goes to the State of Michigan I recognize about a process of transferral of a prisoner between jurisdictions for the purpose of bringing somebody who is incarcerated is one of those restrictions to trial.

JUDGE: Now, this is the 35-2.1-2-4 is that what you're talking about?

MR. McSHANE: That's correct.

JUDGE: Ok.

MR. McSHANE: Article 5 is the article in that interstate agreement which we quote in our memorandum in support of the motion. And also, we hooked in Miranda. And it states that, and Mr. Arthur may or may not be right of no constitutional rights attach to extradition proceedings, there's certainly an equal protection right that must attach if the states are going to seek to use these interstate agreements against people, they must be equal. Other than that there are certain statutory rights which the agreement sets forth. One of them being Article 5 which states in part that the, subparagraph D of Article 5 of the Agreement on Detainer provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on charge or charges contained of one or more untried indictments, information or complaints which form the basis of the detainers, or detainers or for prosecution on any other charge or charges arising out of the same transaction." These transactions and times

which are alleged, Your Honor, in the two cause numbers are, I think, some five or six months apart in time, and in no way are construed to be a part of the same transaction. Different substances, the state will attempt to prove at trial there were different people involved in this, they are not part of the same transaction. And as we've shown, the only documents that Mr. Ramirez received and eventually formally signed pertain only to the marijuana counts. The State produced no evidence that he was ever in any way notified that he must give up his extradition rights in Michigan to come back here and face the charges of Dealing in a Schedule IV Controlled Substances. That is clearly not in compliance with Article 5 of the agreement. For that reason, it's our position that the court has limited jurisdiction at this time to preside over a trial or force Mr. Ramirez to answer charges contained in the Schedule IV Dealing charges. And for that reason we would ask that the court order at this time that the Cause No. 424 and all counts therein be dismissed.

JUDGE: How does this, why do you cite Schumaker here at the bottom?

MR. McSHANE: Your Honor, I believe that case is cited for the proposition that it's statutory language, when it's clear must be interpreted, I do not believe that is an extradition case.

JUDGE: Ok, no, it doesn't appear to be and I just wondered, ok.

MR. McSHANE: Ok, it's our position that the meaning is absolutely plain and it's not been complied with and the State has offered no evidence whatsoever to show that it has been. Thank you, Your Honor.

MR. ARTHUR: I read through the memo a couple different times and I read through the statute several times over the last five and a half years. I have yet to hear or to read anything to show that dismissal is appropriate in this case. There are only two circumstances under the interstate agreement on detainers when dis-

missal of charges and that is what is being asked for here, when dismissal is appropriate. Neither of those is brought up in the Motion to Dismiss. The first of those is if the person is not tried within a proper time, either 180 days or 120 days whichever applies. The second is if the person is returned to the original state of incarceration, the sending state in terms of the interstate agreement on detainer without a trial on the charge. Assuming for just a minute, that Mr. Ramirez is not properly here in Cause No. 424, even that would not be a ground for dismissal. The most that the court could do would be to say okay, trial will go forward on 470, the one that you said he's here on and we can't have the trial on the other one because the temporary custody is not for that. That would in no way be a cause for dismissal. It would only be for a delay. The scenerio at that point would be he's returned to Michigan. We'd file a retainer and he is brought back again. However, we were assuming there that he was not properly here in 424 under the interstate agreement on detainers. That assumption is not correct. I'm not sure which of the exhibit numbers it is. There is a letter from the prosecuting attorney's office attached to that is a copy of a Form 5 as it is known under the interstate agreement on detainers, and a copy of Form 6. The Form 5 is a request by the prosecuting attorney to have a person returned to the prosecuting jurisdiction for trial. The only cause number referred to on that piece of paper is Cause No. 424, the one where dismissal is sought in this case.

JUDGE: Let's find that document.

MR. ARTHUR: Your Honor, that's correct except it also refers to those charges as being marijuana charges. They got the case number wrong. That would be a fair inference.

JUDGE: Who has those?

MR. ARTHUR: Those are the first three documents that were submitted for stipulation.

JUDGE: You're talking about this?

MR. ARTHUR: Yes.

JUDGE: Ok, I got you. This was from the prosecutor's office here to Michigan Department of Corrections evidentally. Ok, proceed. Thank you.

MR. ARTHUR: The only cause number that is referred to there is Cause No. 424. Whatever they may say about the crime in this, it's obvious that they are talking about Cause No. 424, because there are not three counts in Cause No. 470, there are only two counts. Typographical error. No harm to anybody. It is clear from this document that cause number and the number of counts that form the basis for this request for temporary custody.

JUDGE: In 424 there are three counts, but it's dealing in something other than marijuana, right, factually?

MR. ARTHUR: Correct. That's insubstantial error, typographical error in terms of the fact that it clearly specifies that this request is under Cause No. 424. There's a further fact as shown by the next document which is a copy of a Form 6 under the Interstate Agreement on Detainers. He would be brought back on July 21 for trial on or about July 23. Defendant testified that he wasn't brought back on July 21. He testified that he was, in fact, in court on July 23 as the court's records will confirm, and that was under Cause No. 424 for the purpose of submitting a plea agreement. There's no doubt that he was brought back on those forms on Cause No. 424. The question then that arises is whether or not Form 5 is a detainer. It's clear that those documents filed back in March constitute a sufficient detainer to have him here under Cause No. 470. That's not even challenged in the Motion to Dismiss. In Keller vs. Adams, reported at 101 Supreme Court 703, 1981, cited by the Supreme Court of the United States, they said that all law under the Interstate Agreement on Detainers is federal law to be controlled by federal decisions. In it they specifically reject a Pennsylvania decision that had occurred shortly their decision. The

question is what the Supreme Court has defined a detainer to be. In United States versus Mauro, and United States versus Ford cited in 1978 and reported at 98 Supreme Court 1834 on page 1846 the Supreme Court said, "the agreement itself contains no definition of the word detainer". The House and Senate reports, and neither reports on the time when the Congress of the United States passed the interstate agreement on detainers. The House and Senate reports however, explain that "a detainer is a notification filed with the institution in which a prisoner is serving a sentence advising him that he is wanted to face pending criminal charges in another jurisdiction". That definition and four and five thoroughly fit each other completely. It's not only a notice that he is wanted, it's a notice that they want him back. There is nothing in either case law or statute that prohibits that document, five, from being both a detainer and a request to have the person returned. It's endorsed by the court. It lists the cause number and it's a request by the prosecuting attorney. Therefore, another fact to be taken into consideration is that. . .

JUDGE: Before we go on, Mr. Arthur, on these documents here that have been placed in evidence, do you believe that Mr. Ramirez's argument is based on Defendant's Exhibit #5 which includes his signature on the back.

MR. ARTHUR: Those two documents, all that they constitute, if you read through them, if you read the titles of them even, it says here's a notice about something. The first page says a detainer's been filed against you. It sets out what the detainer is. It sets out his right to request final disposition under Article III of the Interstate Agreement on Detainers. The second page, exhibit 5B, all that says is there was a case decided by the United States Supreme Court. Here are your rights under that case. Nothing, the word waiver is not in there on anything that was signed by the defendant

where he said I am waiving extradition, under the interstate detainer, agreement on detainers, provision for that, article three. He never did. There is no document on file in this court showing that he waived extradition. Those two documents or one document in two parts are really notices to him.

JUDGE: Ok, go ahead, I'm sorry. I may have untracked you.

MR. ARTHUR: No problem. To return then to part D of Article 5, it says the, I did have one other thing before I get to that. There was a waiver of a time period filed by Defendant's current counsel. That waiver refers to 120-day period provided by the Interstate Agreement on Detainers. The Interstate Agreement on Detainers provides a 120-day time period in which a person must be tried only in the case where the prosecutor has requested the return of an individual. In a case where a person has waived extradition and come back voluntarily, the time specified is 180 days. Clearly then the defendant through his counsel, by filing this waiver, is acknowledging Form 5, the Request for Temporary Custody, that this is a proceeding under the Article IV, where the prosecutor initiates the return of the individual. Returning to Article 5, Section D of the Interstate Agreement on Detainers, it says the "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on a charge or charges containing one or more untried indictments, informations or complaints which form the basis of the detainer or detainers. What we have in this case are two detainers, one filed in March under Cause No. 470, one represented by the Form 5 filed in July on which the defendant was brought back to this state on which he appeared in court specifically on that cause number two days after his return, cause number 424. The Interstate Agreement on Detainers, therefore, clearly allows these two prosecutions to proceed on schedule because each is based upon the detainer lodged against him in

the State of Michigan. Whatever his understanding or misunderstanding may have been, and whatever the understanding or misunderstanding of some administrators. They are not judges in the State of Michigan saying what is and is not a detainer. The letters filed from the administrators, the Michigan Department of Corrections are opinions of administrators and nothing more. So, whatever their opinions may be, whatever the understanding or misunderstanding of the defendant may be, he is properly before the court and is properly subject to prosecution on each of the two counts. That's all I have unless there are any questions from the court.

JUDGE: No, I don't think so. I do need to ask a couple of questions of Mr. McShane. Which of these documents that you've presented or that perhaps the state has, that you want me to use to say that it's only 470? Obviously, three talks about only 470, right? You're relying on that, and you're also relying on five I guess.

MR. McSHANE: Your Honor, as a matter of fact, we would rely on all the documents that have been submitted.

JUDGE: Well, yes, ok, I understand that, but to limit the State to 470.

MR. McSHANE: That's correct.

JUDGE: You think that all of them together have to be considered.

MR. McSHANE: I believe so, Your Honor. I think all the exhibits that you have before you, including the letters that were the exhibits, part of our motion, because in response to our question was 470 the only one, we get a written response back from the Department of Corrections, Michigan, yes, it was.

JUDGE: Ok.

MR. McSHANE: And I think that's critical in the case. I agree with Mr. Arthur. I think there was a typographical error on the one form where the charges are

designated under Cause No. 424, but they in fact, pertain to dealing in marijuana.

JUDGE: But he thinks the error is at one part on the line and you think it was another, is that right?

MR. McSHANE: That's correct, Your Honor. I mean if there's any doubt. I don't know, we don't have the person here who did that, so we don't know. I think any doubt should be resolved in favor of Mr. Ramirez who is not a lawyer and who would, it would be a fair inference for the court to make that the language dealing in marijuana would ring a bell with him, at that time, whereas not necessarily the cause number. And if there's a doubt in that area, I think that should definitely be resolved in favor of the defendant. Once again, Article 5 does not comply. There is no document before the court at this time to show that Mr. Ramirez was ever given any fair notice by anybody. And I agree that the attorneys here and the court shouldn't hold the administrators of the Department of Corrections in Jackson, Michigan or in the State of Michigan to the same sort of legal requirements that you might expect of an attorney or another court. But at the same time he says he's never even been told that by anybody up there. If the court finds that Defendant's 5A and 5B don't constitute a formal waiver, Mr. Ramirez did testify that he waived. He did understand that he waived, and the facts bear it out. The facts certainly bear out that somebody thought he waived besides him or else he'd still be up there. He's down here. A waiver was at least in a de facto manner which I think is possibly the same manner that the detainer was accomplished, a de facto manner. The document could have been more specific. With respect to the charges, I'd also point out that they contain these copies, Your Honor, of the information in Cause No. 470 which would indicate that that's what that detainer was for. There were no copies of the informations in Cause No. 424 provided to our knowledge to the Michigan Department of Corrections. That's borne out by the correspondence to our of-

fice, or Mr. Ramirez, it was borne out by his testimony. And there's no testimony to the contrary. And for those reasons we still believe that dismissal, the court must dismiss because the court does not have jurisdiction.

JUDGE: All right, then on that point, why, if you're right on those facts that you've just been talking about, it means that you know, everybody was talking about 470 from the start to the finish. Why then is dismissal the property remedy rather than something else?

MR. McSHANE: Because, Your Honor, the court can not try this man because of the method which he was brought down here. If the state wishes to take steps at a later time after this dismissal, I'm not sure. . . .

JUDGE: Well, but my point is, we don't, there are some cases that we don't try and we don't dismiss.

MR. McSHANE: I understand that. But, Your Honor, I would submit that those are cases where the court has both subject matter and personal jurisdiction over the defendant in a criminal case and we don't have that here. You, we would submit that the only remedy for the court is dismissal. If the court finds that that's too strict a remedy to impose against the state, I concur, as an alternative, I would concur with Mr. Arthur and say that they have at least got to send him back up there. And we can proceed on Friday, and well, the charges as charges in Cause No. 470 are certainly valid charges to be brought before the court. And Mr. Ramirez has been brought before the court in a legitimate fashion as pertaining to those two charges. The state is correct. We have no argument on 470 at all and we do understand that at this time that is set for trial coming this Thursday. As of right now we have no quarrel with that. It's the other ones that we're worried about. And there's just, all the documentation supports our position.

JUDGE: Ok. I'll take this under advisement and read through these documents because I haven't seen these, at least I haven't read them in the context of your argu-

ments. So, I will go over your motion and those two letters and. . .

MR. McSHANE: Would you care for counsel to stand by in that respect, Your Honor?

JUDGE: I think not, I'll just give you both a call, and Mr. Bly can call Mr. Arthur if he needs to. Give me your phone number?

MR. McSHANE: Area code 317-636-3300.

JUDGE: Ok.

MR. McSHANE: Certainly not in the way of any threat, Your Honor, but depending on what the ruling is, we may be making a motion for continuance and I think it would be fair to tell the court.

JUDGE: I understand I'll have to rule on it in a hurry for it to be effective for anybody. But we need to look it over anyway since you've presented it.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

DEFENDANT'S EXHIBIT #1

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

June 23, 1981

Mrs. Marge Barker
Agreement Administrator
Indiana Department of Corrections
State Office Building
Indianapolis, IN 46204

Re: State of Indiana

Vs: Patrick Ramirez
Howard Superior Court II, Cause #424

Dear Marge:

Enclosed please find copies of Form V and Form VI on the above named indivudial. If you should have any questions, please contact me.

Yours truly,

/s/ Marty Menges
MARTHA P. MENGES
Administrative Assistant

Enc.

DEFENDANT'S EXHIBIT #2

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

June 23, 1981

Mr. Earl H. Nill
Agreement Administrator
Michigan Department of Corrections
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana
Vs: Patrick Ramirez
Howard Superior Court II, Cause #424

Re: State of Indiana
Vs: Bertram B. Eubank, Jr.
Howard Superior Court I, Cause #2265

Dear Mr. Nill:

Enclosed please find copies of Agreement on Detainers, Form V, on the above named individuals.

If you have any questions, please feel free to contact me.

Yours truly,

/s/ Marty Menges
MARTHA P. MENGES
Administrative Assistant

Enc.

AGREEMENT ON DETAINERS

REQUEST FOR TEMPORARY CUSTODY

To: Gary Mintzes
(Warden-Superintendent-Director)

State Prison of Southern Michigan
(Institution)

4000 Cooper Street, Jackson, Michigan 49201
(address)

Please be advised that Patrick Ramirez #A16D3193 who is presently an inmate at your institution is under [information] in the 62nd Judicial Circuit of which I am the Prosecuting Attorney.

Said inmate is therein charged with [offenses] enumerated below.

Offense

Counts I, II and III Dealing in Marijuana, under Cause #424, Howard Superior Court II.

I propose to bring this person to trial on this information within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody.

Signed /s/ Signature Illegible

Title Fred G. Osborn, Prosecuting Attorney
62nd Judicial Circuit, State of Indiana

DATED: June 16, 1981

Signed _____

(Judge)
Carl E. Van Dorn
Howard Superior Court II

cc: Patrick Ramirez
Marge Barker, Agreement Admin. (IN)
Earl H. Nill, Agreement Admin. (MI)
Honorable Carl E. Van Dorn

DEFENDANT'S EXHIBIT #3

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

March 16, 1981

Gary Mintzes, Warden
State Prison of Southern Michigan
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana

Vs: Patrick Ramirez (Jackson DOC#A16D3193)
Howard Superior Court II, Cause #470

Dear Warden Mintzes:

Enclosed please find certified copies of our Information Affidavits and Arrest Warrant on the above named individual. Please file these documents as a detainer on our behalf against Mr. Ramirez.

It is our understanding, through defendant's attorney, that Mr. Ramirez will be willing to sign a waiver (Form II) in this matter.

Please note the Court's address as follows: Howard Superior Court, Division II, Third Floor, Courthouse, Kokomo, Indiana 46901.

If you require further information, please feel free to contact my office.

Yours truly,

Fred G. Osborn
Prosecuting Attorney

Enc.

cc: Mr. Jeffrey A. Lockwood,
Defendant's Attorney

FGO/min

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Donald C. Howard, Sr., Clerk of Superior Court, Division Two, of said County of Howard in the State Indiana, do hereby certify that the within and preceding pages contain a full, complete, true and exact copy of an Information Affidavit and Arrest Warrant, on file in a cause record in Cause No. 470, State of Indiana, Plaintiff, vs. Patrick Ramirez, Defendant.

Given under my hand and seal of office, at Kokomo, in said County of Howard, in the State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, Sr., Clerk of
Howard Superior Court, Division II

/s/ Donald C. Howard, Sr.

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Carl E. Van Dorn, Judge of the Superior Court, Division Two, of Howard County, State of Indiana, presiding in said County of Howard, do hereby certify that Donald C. Howard, Sr., whose name appears to be signed to the above certificate, is and was, at the time of signing the same, the Clerk of the Howard Superior Court, Division II therein mentioned, and as such was the proper person to make said certificate and that the same is in due form.

Given under my hand officially this 16 day of March, 1981.

/s/ Carl E. Van Dorn, Judge,
Howard Superior Court, Division II

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

I, Donald C. Howard, Sr., Clerk of the Superior Court, Division Two, Howard County, Indiana, do hereby certify that Carl E. Van Dorn, Judge, Superior Court, Division II for Howard County, Indiana, is an was, at the time of signing the same, the duly elected, qualified and acting Judge of said Court herein mentioned and as such was the proper person to make said certificate, and that the same is in due form.

Given under my hand and seal of office, at Kokomo, in said County of Howard, State of Indiana, this 16 day of March, 1981.

DONALD C. HOWARD, Sr., Clerk of
Howard Superior Court, Division II

/s/ Donald C. Howard, Sr.

CLERK'S CERTIFICATE

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

Cause 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

I, DONALD C. HOWARD, SR., Clerk of the Circuit Court, within and for the County of Howard and the State of Indiana, the same being a Court of Record having a seal, do hereby certify that the ATTACHED is a full, true and complete copy of COUNT I INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980, COUNT II INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980 AND THE BENCH WARRANT ISSUED FEBRUARY 22, 1980 IN THE ABOVE CAPTIONED CAUSE as the same appears upon the records of said Court in my custody as such Clerk and on file in my office.

This 13th day of March, A.D. 1981.

Signed [Signature illegible]
Clerk of Howard Circuit Court of Indiana

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant SGT. JACK ADAMS

Subscribed and sworn to before me this 6th day of February, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me,

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting
Attorney
62nd Judicial Circuit

List of Witnesses on Reverse Side

STATE OF INDIANA)
) ss:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs.

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant SGT. JACK ADAMS

Subscribed and sworn to before me this 28th day of January, 1980.

My Commission Expires: 1-10-83

/s/ Martha L. Parish
Notary Public
MARTHA L. PARISH
Howard County Resident

Approved by me,

/s/ Curtis C. Welke
CURTIS C. WELKE
Deputy Prosecuting
Attorney
62nd Judicial Circuit

List of Witnesses on Reverse Side

DEFENDANT'S EXHIBIT #4

STATE OF MICHIGAN

[SEAL]

William G. Milliken, Governor
DEPARTMENT OF CORRECTIONS
Stevens T. Mason Building, Lansing, Michigan 48913
Perry Johnson, Director

December 7, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204 [Dec. 10, 1981]

Subject: Patrick Ramirez, Our #A163193

Dear Mr. Stanton:

This is in reply to your letter of December 2, 1981, in which you request verification that we have an Indiana detainer lodged against Mr. Ramirez.

On March 16, 1981, the Warden of this institution received a letter from Prosecuting Attorney Fred G. Osborn. Attached to that letter is a certified copy of information affidavits and arrest warrant on Patrick Ramirez, Howard Superior Court II, Cause Number 470, along with an arrest warrant. Count one is information for dealing in marijuana filed February 19, 1980, and count two information for dealing in marijuana filed February 19, 1980, and the bench warrant issued February 22, 1980.

Hopefully this information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI, Manager
General Office Services

MM/ms
cc Record File

NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300

December 11, 1981

Mr. Michael Martemucci, Manager
General Office Services
Department of Corrections
Stevens T. Mason Building
Lansing, Michigan 48913

Dear Mr. Martemucci:

Thank you for your letter of December 7, 1981. However, what we need to know is whether the Indiana detainer lodged against Mr. Ramirez, Cause No. 470, is the *only* one he has. In other words, am I correct in assuming there are no other detainers except for Cause No. 470? Thank you for your cooperation.

Sincerely,

/s/ Nile Stanton
NILE STANTON

NS/bk

STATE OF MICHIGAN

[SEAL]

DEPARTMENT OF CORRECTIONS

December 22, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana

Subject: Patrick Ramirez, Michigan #A-163193

Dear Mr. Stanton:

This is in reply to your recent letter dated December 11, 1981.

You are correct in assuming there are no other Detainers lodged in this institution other than Howard County, Indiana.

Hopefully the above information will be helpful.

Sincerely,

/s/ [Signature Illegible]

DEFENDANT'S EXHIBIT #5

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

AGREEMENT ON DETAINERS: Form I

In Duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untired indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said

prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor

has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981

(Insert name and title of custodial authority)

Barry Mintzes

By: Warden

/s/ Barry Mintzes

Date received 3-19-81

Inmate's name

/s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps 3-19-81

Date

/s/ Patrick Ramirez

Received Date

DEFENDANT'S EXHIBIT #5A

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

AGREEMENT ON DETAINERS: Form I

In Duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untired indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said

prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor

has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981

(Insert name and title of custodial authority)

Barry Mintzes

By: Warden

/s/ Barry Mintzes

Date received 3-19-81

Inmate's name

/s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps 3-19-81

Date

/s/ Patrick Ramirez

Received Date

CAUSE 424—MOTION TO DISMISS DENIED, JANUARY 26, 1982. (219)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 26th day of January, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Court having considered Defendant's Motion to Dismiss and having heard and considered evidence and having heard and considered arguments of counsel and having taken the matter under advisement now finds that said Motion to Dismiss should be and is hereby overruled.

• • • •

AGREEMENT ON DETAINERS—see appendix to petitioner's brief.

CAUSE 424—VERDICT DELIVERED MAY 17, 1982. (264-267)

Final arguments of counsel heard.

Final instructions read to the jury.

Jury retires to deliverate at 4:30 P.M.

Jury returns at 10:30 P.M. with verdict.

Jury finds the Defendant guilty in Cause No. 424 on Count I, II, and III as charged.

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA
vs.
PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count I.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA

vs.

PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count II.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT II

Cause No. 424

STATE OF INDIANA

vs.

PATRICK RAMIREZ

VERDICT

We, the Jury, find the Defendant, Patrick Ramirez, guilty as charged in the Information for Dealing in a Schedule IV Controlled Substance, Count III.

May 17, 1982
Date

/s/ Ronald H. Gardner
Jury Foreman

CAUSE 424—COMMITMENT DATED JUNE 8, 1982, SENTENCING PETITIONER TO THREE CONCURRENT TERMS OF FIVE YEARS AND FINING PETITIONER TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00). (424-426)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 8th day of June, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

State appears by Robert Bly.

Defendant appears in person and with counsel, Nile Stanton.

Steven Smith of the Adult Probation Department appears.

Court finds Defendant's true age to be thirty-seven (37) years.

Court finds that the basic sentence of five (5) years as a Class C felony is the proper sentence.

On Count I, Defendant is hereby sentenced to the Indiana Department of Corrections for classification and confinement for a period of five (5) years.

Court fines Defendant in the amount of Two Thousand Five Hundred Dollars ($2,500.00).

Defendant ordered to pay costs.

Count II, Defendant is hereby sentenced to the Indiana Department of Corrections for classification and confinement for a period of five (5) years to be served concurrently with the Count I sentence.

On Count III, court sentences Defendant to the Indiana Department of Corrections for classification and confine-

ment for a period of five (5) years to be served concurrently with Count I and Count II.

These sentences on Count I, II and III to be served consecutively to sentences imposed in Cause No. 470.

Defendant advised of rights to appeal.

COMMITMENT ORDERED.

JUDGMENT ON FINDING.

COMMITMENT

The Howard County Superior Court II

June 16, 1982

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

TO THE SHERIFF OF HOWARD COUNTY, Greeting:

BE IT REMEMBERED, that heretofore, to-wit: At a term of the Superior Court II of Howard County, in the State of Indiana, begun, holden and continued at the Court House in the City of Kokomo, on the 8 day of June, 1982, the same being the ..... judicial day of the ..... term, A. D....., of the said Superior Court II of Howard County, before the Honorable Carl E. Van Dorn sole Judge thereof, the following proceedings were had in the cause of

THE STATE OF INDIANA

vs.

PAT RAMERIZ

No. 424

Crime: Count I Dealing in A Schedule IV Controled Substance, Count II Dealing in A Schedule IV Controlled Substance and Count III Dealing In A Schedule IV Controlled Substance.

Comes now the State of Indiana, by Robert Bly, Deputy Prosecuting Attorney; comes also the defendant in person, and by counsel Nile Stanton and the Court finds that the defendant Pat Rameriz is Thirty-seven (37) years of age, and that said defendant is guilty of the crime charged, namely: Three Counts of Dealing In A Schedule IV Controlled Substance, Class C felony.

It is by the Court, therefore, ordered and adjudged that the said defendant for the offense by him committed, do make his fine to the State of Indiana in the penal sum of Two Thousand Five Hundred ($2500) Dollars, that he be imprisoned in the Indiana Department of Corrections for a period of Five (5) years on Count I, Five (5) years on Count II, to be served concurrently with the Count I sentence and Five (5) years on Count III to be served concurrently with Count I and Count II. These sentences to be served consecutively to sentences imposed in Cause Number 470, and be disfranchised and rendered incapable of holding any office of trust or profit for a term of . . . . years, and that he pay and satisfy the costs and charges herein, taxed at $61.00.

(The following paragraph is to be stricken out if the prisoner is not released on probation under suspended sentence.)

The court further finds that by reason of the character of said defendant, and the facts and circumstances surrounding the commission of said crime, the interest of society does not demand or require that the defendant shall suffer the penalty imposed by law if ..... shall hereafter behave well. It is therefore ordered by the Court that the execution of the sentence herein imposed be suspended during the defendant's good behavior, and that .... be permitted to go at liberty on probation so long as .... behaves well.

The sheriff of said Howard County is hereby charged with the due execution of the foregoing judgment.

.....Judge

CAUSES NOS. 424 & 470— JUDGMENT DATED JUNE 8, 1982. (1032-1033)

JUDGE: All right, Mr. Ramirez, on charge 424 you were found guilty on three counts of dealing in a Schedule IV Controlled Substance. It's my duty to sentence you. On, and on this count I find that the basic sentence of five years as a Class C felony is the proper sentence. Therefore, on Count I I sentence you to the Indiana Department of Corrections for classification and confinement for a period of five years. I fine you in the amount of $2500 and order you to pay costs. On Count II, I sentence you to the Indiana Department of Corrections for a period of five years for classification and confinement to be served concurrently with Count I, sentence. Count III, I sentence you to the Indiana Department of Corrections for classification and confinement for a period of five years to be served consecutively with Count I and Count II and order you to pay costs of the action. For that action once. On, cause rather, Cause 470 which is an information for dealing in marijuana, two counts which are Class D felony. The court will find that it should be handled as a felony and also finds that the basic sentence of two years is the proper disposition in that and will sentence you to the Department of Corrections on Count I for a period of two years for confinement and classification and costs of the action. Count II, sentenced to the Indiana Department of Corrections for classification and confinement for a period of two years to be served concurrently with Count I, two years. Cause No. 470 to be served consecutively with the sentence in Cause No. 424. You are given credit for two days spent in the Howard County Jail. COMMITMENT ORDERED, on both cases. JUDGMENT ON FINDING on both cases.

CAUSES NOS. 424 & 470—MOTION DATED AUGUST 10, 1982, TO CORRECT ERRORS. (1-4)

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

HOWARD SUPERIOR COURT
DIVISION II

Cause No. 424 & 470

STATE OF INDIANA, PLAINTIFF

v.

PATRICK RAMIREZ, DEFENDANT

[Filed Aug. 10, 1982]

MOTION TO CORRECT ERRORS

Defendant Patrick Ramirez, by counsel, and pursuant to Rule 16, Indiana Rules of Criminal Procedure, respectfully moves the Court to correct the errors enumerated below, to order the defendant discharged, to grant him a new trial, and/or to allow the defendant all other just and proper relief.

In support of his motion, the defendant states as follows:

ERROR ONE

The Court erred in denying the defendant's pretrial "Motion to Dismiss".

Statement of the Grounds
Upon Which Error is Based

The defendant filed a timely motion to dismiss based upon the fact that the prosecution of the defendant was contrary to the laws of Indiana. The Court denied the motion and the defendant was convicted.

The Court's decision on this matter was erroneous. The State was given temporary custody of the defendant pursuant to the Interstate Agreement on Detainers, Ind. Code § 35-2.1-2-4 (1976). On March 16, 1981, the prosecutor's office lodged a detainer against the defendant who was then incarcerated at the State Prison of Southern Michigan. The detainer was based solely upon Cause No. 470, which consisted of two (2) counts of dealing in marijuana and a bench warrant issued on those charges.

The prosecution was not satisfied with using its temporary custody of the defendant for trying the defendant for Cause No. 470. The State also tried the defendant for three (3) counts of dealing in a Schedule IV controlled substance. The law in Indiana, however, clearly prohibits any prosecution of the defendant for any charges other than those contained in Cause No. 470. Subparagraph (d) of Article 5 of the Agreement on Detainers provides that the State's temporary custody of the defendant can be used "only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, information of [or] complaints *which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.*"

The import of the aforementioned language is clear and must be interpreted in accordance with its plain meaning. Prosecution of Cause No. 424 clearly did not fall within the purview of the State's authority over the defendant. The State did not lodge a detainer based upon Cause No. 424 against the defendant. It is also

apparent that the charges in Cause No. 424 did not arise "out of the same transaction" which led to Cause No. 470. Cause No. 470 contains two (2) counts alleging dealing in marijuana. The alleged deliveries took place on December 17, 1979, and on December 21, 1979. The alleged acts of Cause No. 424 are not connected with those of Cause No. 470. Cause 424 is comprised of three (3) counts of dealing in a Class IV Controlled Substance (diazepam). The alleged deliveries of diazepam are to have taken place some nine months before the alleged delivery of marijuana in Cause No. 470.

There was no detainer based upon Cause No. 424. Cause No. 424 and Cause No. 470 did not arise out of the same transaction. The Interstate Agreement on Detainers cannot be interpreted by any stretch of the imagination to give the state authority to prosecute the defendant for Cause No. 424. The Court therefore erred in denying the defendant's "Motion to Dismiss".

ERROR TWO

The jury verdict was erroneous in that the evidence adduced at trial was not sufficient to support the conviction.

Statement of the Grounds
Upon Which Error is Based

All of the credible evidence adduced at trial demonstrated that the acts which constituted the information were initiated by an agent of the State of Indiana. The defendant, therefore, timely imposed the statutory defense of entrapment. The Court proceeded to instruct the jury as to the State's burden of proof concerning entrapment.

Although the jury was instructed that the State must prove the defendant's "prior disposition" beyond a reasonable doubt, the jury convicted the defendant. The aforementionend conviction is contrary to law in that there was absolutely no evidence adduced at trial which could rationally lead to the finding of prior disposition.

ERROR THREE

The trial court erred by failing to credit the defendant with all of the jail time to which he was entitled.

Statement of the Grounds
Upon Which Error is Based

The trial court erred in that the defendant should have been credited with all of the time during which he was incarcerated in the Howard County Jail with such time commencing on or about July 23, 1981, and concluding with defendant's sentencing. After the defendant's bail bond was withdrawn on another cause, the only purpose of the defendant's incarceration was the proceedings of the instant cause. Therefore, the trial court erred by not crediting the defendant with all of the jail time to which he was entitled.

WHEREFORE, defendant Patrick Ramirez, by counsel, pursuant to Rule 16, Indiana Rules of Criminal Procedure, respectfully moves the Court to correct the above-enumerated errors, to order the defendant discharged, to grant him a new trial, to correct his credited jail time, and/or to allow the defendant all other just and proper relief.

Respectfully submitted,

/s/ Nile Stanton
NILE STANTON
Attorney at Law
Fourth Floor
21 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 636-3300
Attorney for Defendant

[Certificate of Service Omitted in Printing]

CAUSES NOS. 424 & 470—HEARING OCTOBER 21, 1982, MOTION TO CORRECT ERRORS. (1119-1156)

HEARING HELD 10-21-82

Motion to Correct Errors Hearing

JUDGE: This is State of Indiana versus Patrick Ramirez, 470 and 424. Mr. Stanton's filed a Motion to Correct Errors in both of the matters and the matter is set for argument today. Mr., the defendant appears in person and by Mr. Stanton. Mr. Bly appears for the State. Mr. Stanton?

MR. STANTON: Yes, Your Honor, as a preliminary matter I might mention that at the time of sentencing, I believed I urged the court to consider not attaching to the presentence investigation report copies of all of the taped transcripts of the various tapes. They were very voluminous and I indicated that some of them contained unrelated matters. And I simply urged that those not be sent along because it might prejudice possibly. But as a matter for the court's information, they were sent along with the presentence investigation report and everybody in the Department of Corrections wondered why and it just made for unnecessary paperwork. We just wanted to apprise the court of this fact and probably no useful purpose was served except to use up a lot of photocopy of the state's paper because all of this. . .

JUDGE: I'm missing you, sent along where?

MR. STANTON: To the Department of Corrections.

JUDGE: Oh. Yes.

MR. STANTON: The presentence investigation report that was submitted to the court had attached to it all of the various transcripts of tape-recorded conversations with many people, this cause and other causes. And we just had urged at the time of sentencing that a lot of this was inappropriate and irrelevant to send

all that along. And I forget exactly what the court ruled, but I think it was agreed that it wouldn't be done.

JUDGE: I don't remember it even coming up. I believe you that you brought it up.

MR. STANTON: We haven't assigned it as error and I don't know that it is error, but we wanted to indicate that that did, in fact, go along, and just wanted the court to be apprised of it. On the merits that we do have some slight evidence to introduce in support of error one, if we might. I'd like to have Pat Ramirez called as a witness and sworn so that we can show the court more precisely what we're talking about and have been with respect to the agreement on detainers. We'd like to swear Pat Ramirez to the witness stand. The court can hear. . .

JUDGE: We're talking again about the Michigan-Indiana issue?

MR. STANTON: Right. There is a. . .

JUDGE: We don't have enough evidence somewhere in the record on that, Mr. Stanton?

MR. STANTON: Here's what I'm not sure about, whether there is in this record a copy of the letter that was sent up to Michigan from Kokomo originally along with certified copies of the charges, the detainer itself is what we have. Now, there's been testimony about it, there's been reference to it. Whether the actual detainer and the warrant were put in the record, I don't recall. And, it was the whole issue has obviously been raised in a Motion to Dismiss and I would raise it here, but rather the full document was actually put into evidence. This is what Pat Ramirez was given. It might be in the record, but I just need to be sure. And to show Your Honor, there was no reference made to 424 charges, in Cause No. 424 which is what we maintained all along, but this is just my point.

JUDGE: Mr. Bly, do you have any independent recollection of whether those are in the record, the documents that Mr. Stanton has just mentioned, or perhaps,

even a better question, do you have any objection to them being in now?

MR. BLY: I think they've been brought before the court, Judge, by Mr. Ramirez, if nothing else, before he hired, which documents are you referring to?

MR. STANTON: It consists of a letter dated March 16, 1981, to the Warden of the State Prison of Southern, Michigan from Fred Osborn, the Prosecuting Attorney. Attached to that was a Clerk's certificate certifying count I and count II of two marijuana charges, the ones in Cause No. 470 to which Pat plead guilty. Also, contained, there's a certification to Count I, there's the Count II, there is a formal request for temporary custody from the State of Indiana. There is an advice of the agreement on detainers given to Pat, and presented to him. And there is a form that was signed by Pat. There is a letter referring to the detainers and then there's a copy of the bench warrant. And all that pertains to Cause No. 470 which is the two marijuana counts.

JUDGE: All of these papers you're saying were sent to Michigan at what time?

MR. STANTON: This was March the 7th.

JUDGE: No, not dates, accompanying what to do what?

MR. STANTON: Ok, this was an order for the State of Indiana to get jurisdiction over Pat Ramirez to bring him back under the agreement on detainers. And this was what was actually delivered up there in order to attempt to get jurisdiction. They, in fact, got jurisdiction on Cause No. 470, and we simply would like to offer this into evidence because it, while there's been testimony before on it, and I don't think there's really any serious dispute that he was read a detainer on 424, this simply just goes to actually documenting that. I don't think the State's taking the position that oh yes, he was read a detainer on 424. I think we all know he wasn't.

MR. BLY: I have no objection to the introduction of those documents and the fact that they speak for themselves. What they are is up to the court.

JUDGE: I think that, you know, putting them in at this time, the only problem that I have is that you know, we want to make sure we get the right ones and all of them that went at that time.

MR. BLY: Some of the documents might already be in the record, what was signed by the Clerk.

JUDGE: I wouldn't doubt but what all of them are. That would be my thought, but you know. . .

MR. STANTON: We just don't want the record to be confused. And I don't think the State maintains that, in fact, there was a detainer read on 424, I think the State knows there wasn't. But we also can confirm that in writing.

JUDGE: Well, regardless, you know, I want you to be satisfied that what he's got there are the, you know, copies. True copies, this sort of thing. Once you're satisfied with that, why, they can sure go on.

MR. BLY: I have no objection with the letter here because it's obviously got Mr. Osborn's signature, copy. I have one in my file. The Clerk's Certificate is a matter of record anyway. The information obviously we have.

JUDGE: Go over them and see if you're satisfied.

MR. BLY: There's only three things in this group that I would have any question about because everything but these three things are a matter of public record. One is the Michigan Department of Corrections Notice of Indictment, Information or Complaint and of Right to Request Disposition. I don't know that this is in the record. It appears to be signed by Mr. Ramirez and an individual by the name of Barry Mensis. If Mr. Ramirez is willing to testify under oath that this is a copy of what this pertains to be, I have no difficulty with that. I would object to the introduction of this without some kind of explanation. There's also an attachment to form

one which I'm assuming which purports to be signed again by Mr. Ramirez and another person by the name of Seralla Phelps, simply stating that it's. . . .

JUDGE: Mr. Ramirez, don't you remember putting all of this into evidence at least one or two other times?

A I can't remember.

JUDGE: You can't remember?

MR. STANTON: We just wanted to be sure.

JUDGE: Yes, ok, I understand.

MR. BLY: Then there's a letter of March 19 that's directed to somebody, to Deputy Case and I would object to that because that purports to state by a Sandy Phelps to somebody else what she thinks all this is, and I don't know whether that's worth anything other than just a little extra piece of paper.

MR. STANTON: It was part of what was presented to Mr. Ramirez.

MR. BLY: Again, if Mr. Ramirez is going to testify he received these documents and that these are exact copies, for what they're worth, I have no objection. But as to their being proof positive of this position, I don't, let them speak for themselves.

MR. STANTON: Your Honor, can the witness be sworn?

JUDGE: Sure. Do you swear that you'll tell the truth and nothing but the truth in this matter so help you God?

A I do.

PATRICK RAMIREZ,

after being first duly sworn to tell the truth deposes and says:

DIRECT EXAMINATION

QUESTIONS BY MR. NILE STANTON, DEFENSE COUNSEL

Q Would you state your name for the record please?

A Patrick Ramirez.

Q And you're one in the same Patrick Ramirez that is the defendant in this cause, are you not?

A Yes, I am.

Q I'll show you what's been marked for identification purposes as Defendant's Exhibit A and ask you if you recognize this document which has staples up at the top of it?

A I do.

Q And what are these documents?

A This is a certified letter from the prosecutor of Howard County.

Q Let me ask you this, when did you get these?

A March 17th.

Q Ok, of 1981?

A Yes.

Q And is this what you were given, were you given all of these when you were served the detainer, did this constitute the detainer that you were served up in Michigan?

A Yes, it does.

MR. BLY: Your Honor, I'm going to object to his reference to it as a detainer. I don't think the witness is qualified to answer what it is.

Q Excuse me, are these the documents that you were given and read up in the State of Michigan?

A Yes, they were.

Q And were you asked to sign something to agree to come back to Indiana to face trial on certain charges?

A Yes, I did.

Q And do these constitute the full and complete documents that you were given advising you as to what charges you were facing?

A Right.

Q And within those documents that you signed and agreed to come back under the detainer act on, were there any references to Counts I through III in Cause No. 424 pertaining to diazepam?

A No.

MR. STANTON: Your Honor, at this time we would offer into evidence, Defendant's Exhibit A?

JUDGE: Mr. Bly?

MR. BLY: I have a few preliminary questions.

JUDGE: All right.

PRELIMINARY QUESTIONS BY MR. BLY, PROSECUTING COUNSEL

Q Mr. Ramirez, the documents, these documents are all copies, right?

A Right.

Q I'm going to specifically call your attention to the documents that I made reference to earlier, Notice of Untried Indictment, Information or Complaint and of Right to Request Disposition. Is this a copy of a document that you signed?

A Yes, it is.

Q Is that your signature that appears on that?

A Yes, it is.

Q Did you read this before you signed it?

A Yes, I did.

Q Ok, and this was signed in Michigan, is that correct?

A Yes.

Q At the time you signed this were you incarcerated in the prison at Michigan?

A Yes, I was.

Q Serving a term up there, is that correct?

A Yes.

Q And this attachment, Form 1, is that your signature that appears on there?

A Yes, it is.

Q And that is a copy of that document?

A Right.

Q And you're waiving the pre-transfer hearing of this case, you understood that you were waiving the pre-transfer hearing because of Kyler vs. Adams?

A Right.

Q Do you understand the rights that Kyler vs. Adams would have given you?

A Yes, I do.

Q Those were explained to you?

A Yes.

Q You fully understood them at the time you signed them?

A Yes.

Q And you agreed to waive them?

A Yes, I did.

Q And that's what that is?

A Right.

Q Now, I don't know what this is, who's Deputy Case?

A A deputy at the Southern Michigan Prison.

Q Who's Sandy Phelps?

A She's a court reporter, you know.

Q Ok, now, this wasn't, this letter, this notice, just to him from her, is that right?

A See, each one goes to counselor, and then I get one.

Q Ok, and that's just a note that you got a copy of it?

A Right.

Q How did you get this?

A They took me in front of the office and the signature you was inquiring back there, Barry Mintz, he is the Warden of Southern Michigan Prison, and I went in front of him and two other team board members. At that time they stated that I was charged with dealing in marijuana, counts I and II, Cause No. 470. They asked me at that time, I could have a hearing to fight extradition. I said no, I'd just waiver my rights. So, I waivered my rights and went back to the State of Indiana for the marijuana charges, Count I and II, 470 Cause.

Q You did sign these and you did understand what they were?

A I sure did.

MR. BLY: I have no objection.
JUDGE: Be admitted.

DIRECT EXAMINATION RESUMES

QUESTIONS BY MR. NILE STANTON:

Q Pat, I'll show you what's been marked for identification purposes as Defendant's Exhibit B and what's been marked for identification purposes as Defendant's Exhibit C, and I ask you first of all, do you recognize those?

A Yes, I do.

Q I, acting on your behalf, did you cause your counsel to contact the Department of Corrections in Michigan to ascertain whether or not there were any additional detainers lodged against you other than in Cause No. 470?

A Yes.

Q And you recognize those letters as being copies, true and accurate copies of the letters which purport to be from the Department of Corrections, State of Michigan, as a result of your counsel's request?

A Yes.

MR. BLY: Your Honor, I'm going to object to the introduction of these because they purport to be letters not to Mr. Ramirez, but to Mr. Stanton. One letter appears to be a response to a letter that Mr. Stanton purportedly wrote. We don't have the letter. All we can do is assume that the letter says what the response says it does. I don't think it's relevant.

MR. STANTON: Your Honor, I could put these in as documents obtained by me. My letters aren't relevant. One letter we simply wrote the Department of Corrections in Michigan on December the 2nd of '81 asking to verify about the detainers. They sent us back a letter saying yes, he was served a detainer on thus and so a date, Cause No. 470 in the counts pertained to marijuana. And we had asked them to tell us if there were any others, but they didn't answer it in the first letter.

They just said yes there was a detainer in Cause 470. Ok, so we wrote them back and we said on December the 11th, which they referred to in their other letter and we asked them if we could correctly assume that there weren't any others. And they just said you are correct in assuming there are no others. Ok, cause that's the information we wanted. We just wanted some kind of confirmation. Now, these are in fact addressed to me. They bear on their face, they purport to be what they obviously are. They're letters addressed to me as his lawyer. They're representations made by the Department of Corrections. I suppose I could take the witness stand and verify they are the true and accurate, the actual letters that I received from the Department of Corrections in response to my request for information about the detainers. I just wanted the record to be real clear that there weren't any others. And how you affirmatively show something doesn't exist, the only way I know to do it.

JUDGE: We'll admit them.

MR. STANTON: We have no further questions, Your Honor. We have no further witnesses.

JUDGE: Anything else, Mr. Bly?

CROSS EXAMINATION

QUESTIONS BY MR. ROBERT BLY:

Q Mr. Ramirez, at the time you were brought back you were represented by another attorney, were you not?

A Yes, I was.

Q Who was that attorney?

A Jeffrey Lockwood.

Q At the time that you were brought back here were you not engaged through him with the State of Indiana in a plea bargain?

A No, I wasn't.

Q You weren't?

A No.

MR. STANTON: Your Honor, I object on relevancy grounds. I don't see how that has to do with the agreement on detainers.

MR. BLY: If the court will permit me, I hopefully can show a foundation here where I'm going with this. This is why he was brought back in the first place.

JUDGE: Hey, you know, I don't want to go through this thing four, five different times. I understand that you gentlemen like to do it, but I don't. You know, we've done it. Now, what's the gist of this now, Mr. Bly?

MR. BLY: Well, all we have to do is look at the plea bargain, and we can see . . .

Q Mr. Ramirez, you did sign the plea bargain?

A Yes, I did.

Q We can look at the plea bargain, we can read it, and we can see precisely what Mr. Ramirez . . .

JUDGE: It's in the record, isn't it?

MR. BLY: Right, it's in the record. I'll withdraw the question. I have no further questions.

MR. STANTON: Your Honor, the only reason for wanting to introduce additional evidence was that we wanted to be clear that there weren't any speculation.

JUDGE: I understand fully why you did it.

MR. STANTON: Thank you, we would at this time make our argument as brief and to the point as possible. We respectfully submit that the court erred in denying the Motion to Dismiss. First of all, briefly, I would like to remind the court and the state of some presumptions of law. First of all, we have a presumption of law that if there is a common law, there's no statute, the common law prevails. In this case there is a statute. Statutes are presumed to be valid, and they are to be strictly construed, and the State, throughout the states, wherever there are different state laws, they are to be strictly construed. Now, generally, your language in interstate acts is more general than what it is in other acts so you can get all the states to agree on it. The statutes are to be strictly construed, and normally your interstate acts are

kind of general language because that's the way you have to draft them to get the states to agree on them. The interstate act on detainers though is very specific in several respects, and we should remember the purpose of it. The purpose of it is to, a long time ago you would have law enforcement agencies go outside their jurisdiction and just get somebody. Maybe they'd been there for a year or two or three and they'd kind of gotten established in the community, and the people were getting upset when this law enforcement agent is driving across several state lines and getting somebody without anything, and taking them some place and nobody knew what was going on. And the purpose of this was to try to get some kind of general agreement on what to do. So, Indiana and Michigan have both, and are among the many signatory states of the agreement on detainers. Now, the agreement on detainers which we have a copy of, Your Honor, is very specific. And we would direct the court's attention to Article 5, Section D specifically, and it's found at the Indiana Code Section 35-2.1-2-4, and I might add that the language of the statute is directly quoted to Mr. Ramirez in Defendant's Exhibit A which were the detainer documents that he received. Michigan gave him notice of what his rights and duties were. And here's the agreement that he signed. He said and it's just straight, reflects the language of the statute. It says, "your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed." Ok. Now, that's what he was told. The act specifically, and we have a copy of it, we quoted it in our Motion to Correct Errors on page two. The second page of the Motion to Correct Errors, Your Honor, we quote the act. The language that we quoted is straight from the detainer act. And this is what, here's the custom that's referred to, and we draw the court's attention

to the fact that what the court has in Defendant's Exhibit A here is the temporary custody clearly, it's the temporary custody that's referred to. In fact, up at the top of it, one of these it says, "Agreement on Detainers, Form One" and it shows that this is a request for temporary custody. As a matter of fact, the prosecutor in his letter referred to the fact. The definition under Article 5, Section D says "the temporary custody referred to in this agreement shall be", and if there's any question about the clear language of this act at some point, I would invite the prosecutor of the court to, if it's not clear, I'd like to know on what point. It says "the temporary custody referred to in this agreement shall be only, only for the purpose of permitting prosecution on the charge or charges", in this case charges because there were two counts on the marijuana stuff, "charges contained in one or more untried indictments", there could be other untried indictments, informations or complaints which fully form the basis of the detainer". Which form the basis of the detainer or detainers. "Or for prosecution on any other charge or charges arising out of the same transaction". Now, in this case, 470 was the basis, was the sole basis for the detainer. That's all he did. That's all he signed or anything. And then when he came down here, 424 was lodged against him, and those don't arise out of the same transaction. Nobody can pretend that they do. If those pertain to counts that were brought charges nine months earlier. Nine months earlier on diazepam. And what the state did was they brought him down on that, and it's a clear violation of the act. There's no question about it. There's no statutory confusion or ambiguity at all. I would respectfully remind the court that where there is a vagueness in the statutory law pertaining to criminal cases, if it's a question of interpretation, the question is supposed to be resolved in favor of the accused. In this case there's not even a question of vagueness in this statute. The statute is clear. Under the common law, we'd acknowledge, that

if you have custody of the person, you got them, you have jurisdiction. You have jurisdiction over the person. That's common law. That's like case law. For years. But we do have a specific statute now, and there's no finding. Nobody's pretending this is unconstitutional or that somehow the court decision to supervene this. There's nothing saying that all anywhere. There's no case in the State of Indiana that says that oh, that clear language means something or other than what it says. There's no case at all. And I know the state would be unable to show the court any. We do ask the court to note the documents which we've introduced. We've demonstrated to the court that there never was any detainer on 424 read on Pat. He did come back here on 470. He plead guilty on 470. He has two valid, legitimate marijuana convictions pursuant to a guilty plea. He was sentenced to two years on each one and that's the time he should serve. What should happen, is those other charges should be dismissed. Pat Ramirez should be allowed to go back to the State of Michigan where he has been granted parole and he would be on parole in the State of Michigan because he would be discharged under the marijuana counts. That's what should happen to Pat Ramirez today. The other area, error two, simply maintains that there was not sufficient evidence on the proof of entrapment. That obviously, we say that there is no proof of prior disposition on that. And the only prior disposition evidence came from their own informant, and we believe that that should be insufficient as a matter of law because he said he had previously been dealing drugs, or getting drugs from Pat Ramirez. And yet allegedly, the government sent him in there for some different matter and coincidentally he got drugs from Pat this time. Now, we submit that there should be some other proof of prior disposition other than the informant. We think that there, that should be insufficient as a matter of law. The third error is simply a matter of computation. The third one is that when Pat Ramirez, and that just has to do

with sentencing. When he came down here, the bond was taken off of him on July 23, 1981. And at that time we maintain that his time from July 23, 1981 up to sentencing should be credited on his sentence. He was not on bond. He was incarcerated here. He was maintained here at the request of the State of Indiana. He was not held in pursuant to a Michigan order. They said they wanted him back to parole him. Indiana didn't give him back and Pat should get the time credited towards his sentence since then. In any event, Your Honor . . .

JUDGE: Mr. Stanton, if the court thinks that that's an error, do we remedy that just by sending another letter to the Department of Corrections and saying that we've refigured it, and we think he should get credit for x-more days.

MR. STANTON: Right, the way that would be corrected, Your Honor, would be to sign an amended commitment or a supplemental commitment order just clarifying the matter of the time to be credited. As a matter of fact that's something that is going to have to be done anyway, because in the commitment orders, the copies that we have reflect that there was no time given to Pat and we know that's wrong. This reflects none. The court had given him some, I forget how many, two, or I don't know what it was.

A Right here they say two days and on this one it says 27 days.

MR. STANTON: On one cause number and commitment, there was one day stated, Pat's right, and then on another one two on one and twenty-seven on the other and we believe that they're both incorrect. That's just a matter of . . .

JUDGE: You're asking for how many days?

MR. STANTON: 331 days, Your Honor. That would be from July 23, 1981, up to the date of sentencing which would be August the 17.

JUDGE: And the July 23, 1981, is what date, what happened to Mr. Ramirez then?

MR. STANTON: That is the date that the bail was taken off. He had previously posted bail. And the bail bond was withdrawn on that other cause in order that incarceration would count on his time that he served.

JUDGE: Ok, and he was in this county at that time?

MR. STANTON: Yes, he was, in the Howard County Jail.

JUDGE: July 23, 1981, and the bond on him, on other case was withdrawn and we gave him his money back or, cancelled the bond?

MR. STANTON: That is correct, Your Honor. The net effect of the Motion to Correct Errors, Your Honor, is to respectfully urge the court to simply strictly construe, follow the clear language of the detainer and to correct the error that was made in denying the Motion to Dismiss, correct the sentence that Pat Ramirez has, the sentencing date, the credit time dates, and that totals up, he would be, with good time he would be out of the marijuana charges and be allowed to be released to the parole authorities to the State of Michigan because he has been ordered back to report for parole. He's supposed to report to the Bureau of Field Services, Third Floor, Stevens T. Mason Building in Lansing, Michigan, pursuant to parole up there. In any event, Your Honor, we do urge the court to seriously consider the error assigned as one. If we know that there are no decisions on that. The thing of it is, it's the clear statutory language says that we're right. And if the court, if this is going to get up into the posture of an appellate court, we urge the court, we hope the court would be affirmed. And the state's appeal, the state would take it up, and we believe the court would be affirmed by granting the motion at this time. Thank you.

JUDGE: Mr. Bly.

MR. BLY: May it please the court and Mr. Stanton, I too, am a little tired of arguing this issue since it's already been decided at the Motion to Dismiss. I think the court's ruling in that case was correct. I strongly disagree with Mr. Stanton's and Mr. Ramirez's position as

set out in his Motion to Correct Errors. As to the what I'll call the secondary arguments that the verdict was not sufficient, I think that the record speaks for itself on that. I don't think there needs to be any discussion on that. The issue of entrapment, that instruction was given and I don't believe that the jury had any difficulty with that, there was sufficient evidence. I don't think that that needs to be gone into. I do have some problem with the argument on credit time. First of all, I'm not altogether sure that credit time is something to which this court is required to address itself. I think that's more a question for the Department of Correction, but since it has been brought up and since it has been raised, I would cite the court to a very recent Court of Appeals case Burnett vs. State which is reported at the Indiana Appellate Court Case 439 N.E. 2nd, 174. It just came out in this week's advance sheet. Very briefly this case involved a detainer a gentleman was brought from Ohio to Indiana just like Mr. Ramirez. And he seemed to feel that he should be given credit time based upon his sentence in Ohio as I read the case. The court of appeals didn't go along with that and held that the defendant was not entitled to credit on the Indiana sentence for time served on the Ohio sentence after Indiana filed a detainer against him. And until the date Indiana obtained temporary custody, but he was entitled to credit for five days confinement in Indiana before he was re-delivered to Ohio. It says there is no constitutional right to serve concurrent sentences for separate crimes in Indiana. It says making a sentence on Indiana charge consecutive to Ohio charge is authorized by statute. I would urge the court to read that for how it pertains to this case. I think it might give the court some insight on credit time. The state's position on the credit time is, has always been that while Mr. Ramirez was here he was, in effect, serving his sentence in Michigan. The fact that they, he has still not been given parole is not a question for the State of Indiana, but rather a question for the State of Michigan as it relates to Mr. Ramirez.

Finally, I'll address myself to the error that's alleged in error number one. I think Mr. Stanton and Mr. Ramirez have spent a great deal of time discussing and arguing as we argued back in February. I call the court's attention to a number of things that have been cited in the statement of errors. One of which, the clerk's certificate and the letter of March 16, 1981, somehow constitute a detainer. The court has before it, and probably in a lot of places in the record a multitude of these detainers or forms that I call interstate agreement on detainers. And the reason I call them that is that's what's at the top of them. Now, I don't have the cases because quite, frankly, Judge, there are no cases that I can find that are directly on point on this in Indiana at least. But I would call the court's attention to the fact that there are some documents in, and the very things that Mr. Stanton submitted this morning, one is called Form Five, Agreement on Detainers. I happen to have a copy of that and it says Gary Mensis, etc., and the court can read that, signed by Mr. Osborn, it's also signed by Your Honor requesting Mr. Ramirez's presence here for a trial. And it reads Count I, II and III, dealing in marijuana, in Cause No. 424. I think that might have been a typo because my records show that 424 is dealing in schedule IV Controlled Substance. And then there's evidence of agent's authority to act signed by Mr. Osborn, Prosecuting Attorney. This was filed and dated, the date of the request was June 16, 1981. I believe Mr. Ramirez was actually delivered to the Sheriff on July 23, 1981. And shortly thereafter, appeared in court and filed the Recommendation of Plea Bargain which again is in the record, signed by him, Mr. Welke who was my predecessor and Mr. Lockwood who was Mr. Ramirez's then attorney. The plea bargain again speaks for itself. And it also agrees, sets out that the State agrees to dismiss all other counts now pending this action and all other causes of action now pending in Howard County. That's subsection D. Now, fortunately, or unfortunately as the case may be, Mr. Ramirez, as the

record will show, on the date that this matter was set for sentencing withdrew his plea agreement so the plea agreement, I suppose, has no substance as far as what effect it would have as to sentencing and whether it's binding to Mr. Ramirez. But the plea agreement does show one thing that when taken into consideration with all other things, I think it shows what was going on in Mr. Ramirez's mind. When Mr. Ramirez was brought back here in July of 1981, he certainly felt at least at the time he signed this, he certainly felt that this plea agreement would dispose of everything including 470. Now, he may stand up and say that he didn't which wouldn't surprise me, but again we have a document. Another document which Mr. Ramirez signed and is in the record again for about the third time, is the waiver that he signed in Michigan. Now, I would urge the court to read that waiver, because I don't know the exact word, but for some reason it's saying that he understands and he testified that he understood that he's going to come back and that this gives the State of Indiana or whoever, the requesting state the authority to try all untried indictments or informations. Now, I don't know the exact words, but I think Mr. Ramirez helped to point it out by underlining it in red. I would call that to the court's attention too. That is pretty much the language of the statute, of the agreement on detainers. It seems to me that Mr. Ramirez is coming along and he's arguing a conclusion of law, and he's saying this warrant of this clerk's certificate, this letter from some Phelps lady to a deputy, this is somehow a detainer. And that this detainer was lodged in March of 1970. I'm sorry, the detainer was on Number 470 lodged in March of 1981, but somehow that is the detainer. Well, I can play that game too, Judge. I say Mr. Ramirez says it is a detainer just because they say it's a detainer, I'm going to say it's not a detainer because the detainer is on the form, agreement on detainers, form five and form six. So, we can sit here and we can argue forms, and we can argue what a deputy Sheriff in Michigan might have

thought and we can argue what Mr. Ramirez thought, but the question is, why was he here. What happened here. What did we spend five or six days doing in this court back in May? Clearly, I don't think, I think if you interpret the agreement on detainers the way Mr. Ramirez would have us believe it, it would almost profit someone to break the law in another state, especially if he was under indictment in one state. And the reason I'm saying that is because the whole purpose, and if you read the text on agreement of detainers, Article I specifically sets out, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. You go back to Article Nine, the agreement, section one, this agreement shall be liberally construed so as to effectuate its purpose. Liberally construed. I think maybe Mr. Stanton and Mr. Ramirez are confused, and if I said this I apologize, I don't mean to be insulting, possibly confusing the detainer act with the extradition act. Extradition as I understand it, they are similar, but not the same. And I think the gentleman from the Attorney General's office, he was here in February when we argued the Motion to Dismiss made a good point. An extradition involves the right of an individual to be returned to a state where he's not in custody, where he's not serving time. A detainer, in effect, as I understand it, comes along and says Mr. Ramirez, you're in prison in Michigan, now you don't have to return to Indiana until your time is done, but we're going to bring you back under this detainer. In other words, it's between Indiana and Michigan. I'm saying simply that the State would disagree first of all that the March 16, '81 paperwork is a detainer. I don't believe that it is a detainer. I don't believe there's any way that you can feel that this is a detainer. Secondly, all untried indictments and informations would mean 470, 424 and anything else we got pending here. So, I would respectfully urge

the court to deny the Motion to Correct Errors. We've been over this ground before. I don't see where rehashing it and redoing it is going to serve any purpose at all and we would respectfully request the the motion be denied. Thank you.

JUDGE: Thank you gentlemen.

MR. STANTON: The state's maintaining that that is not a detainer and that that, I know we've been over it before, however, we tried today to make it real perfectly clear what we're doing. And the state maintains that's not a detainer. That just amazes me because the Department of Corrections of the State of Michigan said it was a detainer. The documents he was asked to sign says that this is pursuant to the interstate act on detainers. And it clearly does, Your Honor. This is a detainer and we urge the court to strictly construe that and we understand it's to be liberally construed, but it says prosecution on the charge or charges for which form the basis of the detainer and there was none. We do urge the court to give effect to that language. As the prosecutor submitted, there's no decision and we ask the court to follow the plain language of the statute. Thank you very much.

JUDGE: Thank you, I'll take it under advisement.

AND NO FURTHER PROCEEDINGS WERE HELD IN THIS CAUSE ON THIS DATE.

DEFENDANT'S EXHIBIT A

[SEAL]

OFFICE OF THE PROSECUTING ATTORNEY
62ND JUDICIAL CIRCUIT
620 Armstrong-Landon Building
Kokomo, Indiana 46901
Area Code 317/459-5111

March 16, 1981

Gary Mintzes, Warden
State Prison of Southern Michigan
4000 Cooper Street
Jackson, Michigan 49201

Re: State of Indiana
Vs: Patrick Ramirez (Jackson DOC#A16D3193)
Howard Superior Court II, Cause #470

Dear Warden Mintzes:

Enclosed please find certified copies of our Information Affidavits and Arrest Warrant on the above named individual. Please file these documents as a detainer on our behalf against Mr. Ramirez.

It is our understanding, through defendant's attorney, that Mr. Ramirez will be willing to sign a waiver (Form II) in this matter.

Please note the Court's address as follows: Howard Superior Court, Division II, Third Floor, Courthouse, Kokomo, Indiana 46901.

If you require further information, please feel free to contact my office.

Yours truly,

/s/ Fred G. Osborn
FRED G. OSBORN
Prosecuting Attorney

Enc.

cc: Mr. Jeffrey A. Lockwood,
Defendant's Attorney

FGO/m.

[Filed Apr. 14, 1980]

CLERK'S CERTIFICATE

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

Cause 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

I, DONALD C. HOWARD, SR., Clerk of the Circuit Court, within and for the County of Howard and the State of Indiana, the same being a Court of Record having a seal, do hereby certify that the ATTACHED is a full, true and complete copy of COUNT I INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980, COUNT II INFORMATION FOR DEALING IN MARIJUANA FILED FEBRUARY 19, 1980 AND THE BENCH WARRANT ISSUED FEBRUARY 22, 1980 IN THE ABOVE CAPTIONED CAUSE as the same appears upon the records of said Court in my custody as such Clerk and on file in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, at the City of Kokomo, Indiana, this 13 day of MARCH A.D. 1981.

/s/ Donald C. Howard, Sr.
DONALD C. HOWARD, SR.
Clerk of Howard Circuit Court
of Indiana

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT I

INFORMATION FOR DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 17th day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez, late of said county, did then and there knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such cases made

and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant Sgt. Jack Adams

Subscribed and sworn to before me this 6th day of February, 1980.

STATE OF INDIANA)
) SS:
COUNTY OF HOWARD)

IN THE HOWARD SUPERIOR COURT
DIVISION II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Feb. 19, 1980]

COUNT II

INFORMATION FOR
DEALING IN MARIJUANA

Before me, Notary Public, came the undersigned affiant, who, duly sworn according to law upon his oath deposes and says:

That on or about the 21st day of December, 1979, at the county of Howard, and State of Indiana, Patrick Ramirez, late of said county, did then and there unlawfully knowingly or intentionally deliver marijuana in an amount in excess of thirty (30) grams, then and there being affiant is informed and believes, contrary to the form of the statutes, to-wit: I.C. 35-48-4-10 in such

cases made and provided, and against the peace and dignity of the State of Indiana.

/s/ Sgt. Jack Adams
Affiant Sgt. Jack Adams

Subscribed and sworn to before me this 28th day of January, 1980.

REQUEST FOR TEMPORARY CUSTODY

Gary Mintzes, State Prison of Southern Michigan, 4000 Cooper Street, Jackson, Michigan 49201.

Please be advised that Patrick Ramirez, #A16D3193, who is presently an inmate of your institution, is under [information] in the 62nd Judicial Circuit, of which I am the Prosecuting Attorney, said inmate is therein charged with the [offenses] enumerated below:

Offense

Counts I, II and III Dealing in Marijuana, under Cause #424, Howard Superior Court II

I propose to bring this person to trial on this [information] within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return this prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

Signed: /s/ Fred G. Osborn

Title: Fred G. Osborn,
Prosecuting Attorney
62nd Judicial Circuit,
State of Indiana

Dated: June 16, 1981

Signed /s/ Carl E. Van Dorn
(Judge)
CARL E. VAN DORN
Howard Superior
Court II

cc: Patrick Ramirez
Marge Barker, Agreement Admin. (IN)
Earl H. Nill, Agreement Admin. (MI)
Honorable Carl E. Van Dorn

MICHIGAN DEPARTMENT OF CORRECTIONS

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT AND OF RIGHT TO REQUEST DISPOSITION

CSO-221A Rev. 6/80

AGREEMENT ON DETAINERS: Form I

In duplicate, one copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

Inmate's name Patrick Ramirez

Number A163193

Institution SPSM-JL

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

Howard County, Indiana—two counts of delivery of marijuana; bench warrant

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request,

together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify Supervisor of Records of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court.

You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

Dated: March 19, 1981.

(Insert name and title of custodial authority): Barry Mintzes.

By: Warden /s/ Barry Mintzes

Date received 3-19-81

Inmate's name /s/ Patrick Ramirez

ATTACHMENT TO FORM I

You are further advised that by a decision of the United States Supreme Court in Cuyler vs Adams No. 78-1841 decided January 21, 1981, you have the right to judicial pretransfer hearing, before being transferred to another jurisdiction pursuant to Article IV of the Detainer Agreement.

/s/ Sandra Phelps

/s/ Patrick Ramirez

Received Date

March 19, 1981

Deputy Cason:

re: 163193 Ramirez, Patrick

The Howard County, Indiana, prosecutor has lodged a detainer against Mr. Ramirez, charging him with two counts of delivery of marijuana and one bench warrant.

/s/ Sandy Phelps
SANDY PHELPS

smp
cc: Counselor
RO Folder
Resident
Lansing RO

Bond $50,000.00

BENCH WARRANT
SUPERIOR COURT II

No. 470

STATE OF INDIANA

vs

PATRICK RAMIREZ

[Filed Mar. 10, 1980]

Curtis Welke
Deputy Prosecuting Attorney

STATE OF INDIANA, HOWARD COUNTY, ss:

The State of Indiana to the Sheriff of Howard County, Greeting:

You are hereby commanded to arrest Patrick Ramirez if he may be found in your bailiwick, so that you have his body before the Judge of Superior Court II of Howard County, instanter, and then and there to answer the State of Indiana on charge of Count I Dealing in Marijuana and Count II Dealing in Marijuana and abide the order of the Court thereon, and return this writ.

WITNESS, The Clerk and Seal of said Court this 22 day of February, 1980.

/s/ Donald C. Howard, Sr., Clerk
DONALD C. HOWARD, SR.

Sheriff's Return

DEFENDANT'S EXHIBIT B

STATE OF MICHIGAN

[SEAL]

DEPARTMENT OF CORRECTIONS

Perry Johnson, Director

December 7, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204

[Dec. 10, 1984]

Subject: Patrick Ramirez, OUR #A163193

Dear Mr. Stanton:

This is in reply to your letter of December 2, 1981.

On March 16, 1981, the Warden of this institution received a letter from Prosecuting Attorney Fred G. Osborn. Attached to that letter is a certified copy of information affidavits and arrest warrant on Patrick Ramirez, Howard Superior Court II, Cause Number 470, along with an arrest warrant. Count one is information for dealing in marijuana filed February 19, 1980, and count two information for dealing in marijuana filed February 19, 1980, and the bench warrant issued February 22, 1980.

Hopefully this information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI, Manager

DEFENDANT'S EXHIBIT C

STATE OF MICHIGAN

[SEAL]

William G. Milliken, Governor

DEPARTMENT OF CORRECTIONS

Stevens T. Mason Building, Lansing, Michigan 48913

Perry Johnson, Director

December 22, 1981

Nile Stanton, Attorney at Law
21 N. Pennsylvania Street
Indianapolis, Indiana 46204

Subject: Patrick Ramirez, Michigan #A-163193

Dear Mr. Stanton:

This is in reply to your recent letter dated December 11, 1981.

You are correct in assuming there are no other detainers lodged at this institution other than Howard County, Indiana.

Hopefully the above information will be helpful.

Sincerely,

/s/ Michael Martemucci
MICHAEL MARTEMUCCI
General Office Services Manager

MM:jt

cc: Record Office File

CAUSES NOS. 424-470—MOTION TO CORRECT ERRORS DENIED OCTOBER 26, 1982. (445)

AND BE IT FURTHER REMEMBERED that heretofore, to-wit on the 26th day of October, 1982 before the Honorable Carl E. Van Dorn, sole Judge of the Howard Superior II Court, the following proceedings were had.

Court having heard evidence and arguments of counsel now finds that Motion to Correct Errors should be and is hereby overruled.

* * * *

OPINION OF THE COURT OF APPEALS OF INDIANA

IN THE
COURT OF APPEALS OF INDIANA
SECOND DISTRICT

No. PS 518

PATRICK RAMIREZ, APPELLANT
(Defendant Below)

v.

STATE OF INDIANA, APPELLEE
(Plaintiff Below)

[Filed Oct. 26, 1982]

APPEAL FROM THE HOWARD SUPERIOR COURT, NO. II
THE HONORABLE CARL E. VAN DORN, JUDGE
CAUSE NO. 424 & 470

SHIELDS, J.

Patrick Ramirez (Ramirez) appeals pro se his convictions under I.C. 35-48-4-3 (Burns Code Ed., Repl. 1979) of dealing in a schedule IV controlled substance. Ramirez raises the following issues:

1) whether the trial court erred in denying his pretrial motion to dismiss the information for failure to comply with the agreement on detainers (Agreement), I.C. 35-2.1-2-4 (Burns Code Ed., Repl. 1979) (repealed 1982); recodified as I.C. 35-33-10-4 (Burns Code Ed., Supp. 1982),

2) whether there was sufficient evidence to support his convictions;

3) whether the trial court committed fundamental error by ordering Ramirez to serve his sentences consecutively; and

4) whether the court erred in calculating his credit time for the days he spent confined awaiting trial sentencing.

On March 20, 1979, Ramirez was charged by information, Cause 424, with three counts of dealing in a schedule IV controlled substance, a class C felony. The incidents on which the charges were based occurred January 28, 1979, March 9, 1979, and March 12, 1979. Then, by a two-count information dated February 6, 1980, Ramirez was charged under Cause 470 with dealing in marijuana, a class D felony, on December 17, 1979 and December 21, 1979. This appeal concerns Cause 424.

The second reveals Ramirez was serving a sentence in March 1981 in the State of Michigan for dealing in cocaine. On March 16, 1981, the prosecuting attorney for the 62nd Judicial District, Howard County, Indiana mailed the warden of the State Prison of Southern Michigan certified copies of the *two*-count information in Cause *470*, dealing in marijuana, requesting the information be filed as a detainer against Ramirez. On June 23, 1981, the prosecutor followed up by mailing an Agreement on Detainers Form V notifying the State Prison of Southern Michigan that Ramirez was charged in Howard Superior Court II with *three* counts of dealing in marijuana under Cause *424*.

The Michigan warden notified Ramirez by Michigan Department of Corrections Agreement on Detainers Form I that an untried Howard County, Indiana information in two counts of dealing in marijuana had been brought to his attention by the Indiana prosecutor. After he was informed of the provisions of the interstate agree-

ment on detainers, Ramirez signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana.

I.

Ramirez' first issue presents two questions: 1) whether his presence in Indiana was obtained under the Agreement, I.C. 35-2.1-2-4, on the basis of Cause 424, three counts of dealing in a controlled substance, and 2) if not, what remedy exists for the State's failure to follow the provisions of the Agreement.

The Agreement is a uniform law enacted by the majority of the states and the federal government.[1] Its purpose is to encourage the expeditious and orderly disposition of outstanding charges and detainers based on untried indictments and information against prisoners. I.C. 35-2.1-2-4, Article 1. The Agreement provides a method by which an imprisoned individual may seek final disposition of the charges contained in a detainer filed against him by another jurisdiction. The Agreement also provides a method by which other jurisdictions may gain temporary custody of a prisoner to try him on outstanding charges for which a detainer has been filed.

The State's interest protected by the Agreement, having a simplified procedure for gaining temporary custody of defendants imprisoned in other jurisdictions, is obvious. The Agreement, however, also protects the interests of imprisoned defendants in "removing the difficulties in securing speedy trials" and removing "the uncertainties which obstruct programs of prisoner treatment and rehabilitation" when a prisoner's status is clouded by the existence of untried charges on which detainers have been lodged. I.C. 35-2.1-2-4, Article 1.

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[1] The Agreement is codified in Michigan as Mich. Comp. Laws Annot. § 780.601 to .608 (1982).

Pursuant to the Agreement, after a detainer is filed,[2] the jurisdiction which filed it may present a written request for temporary custody of the prisoner to appropriate authorities of the state in which the individual is incarcerated. The Agreement provides a thirty-day period shall pass after receipt of the request before the request may be honored. The Agreement further provides,

> "[T]he appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him in writing of his rights to counsel, to make representations to the governor within thirty [30] days, and to contest the legality of his delivery."

I.C. 35-2.1-2-4, Article 9(7).

By mandate of the United States Supreme Court, unless waived, the imprisoned defendant must be afforded an extradition-type hearing before the request for temporary custody is honored. *Cuyler v. Adams*, (1981) 449 U.S. 433. Further, upon request of the state in which the individual is incarcerated, the state requesting temporary custody is required to present a certified copy of the indictment, information, or complaint which forms the basis of the detainer. I.C. 35-2.1-2-4, Article 5(2).

The State contends Ramirez' presence in Indiana was secured under the Agreement on both Cause 424, three

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[2] "Detainer" is not defined by the Agreement. However, a detainer has been described as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *Webb v. State*, (1982) Ind., 437 N.E.2d 1330, 1331 (quoting S. Rep. No. 21-1356, 91st Cong., 2d Sess. 2 (1970)).

counts of dealing in a schedule IV controlled substance and Cause 470, two counts of dealing in marijuana. We disagree.

The certified copy of the two-count information in Cause 470 transmitted to the Michigan authorities was undoubtedly sufficient to serve as a detainer as to that cause. The controversy involves the document subsequently transmitted which incorrectly described the outstanding charge as a three-count information for dealing in *marijuana* under Cause 424. This document was apparently understood by Michigan authorities to refer to the two-count dealing in marijuana information transmitted earlier. The record shows Ramirez was informed in writing of the following outstanding information against him: "Howard County, Indiana—two counts of delivery of marijuana; bench warrant." Record at 559. Further, there is evidence the Michigan authorities verbally informed Ramirez his return to Indiana was requested to stand trial on charges of dealing in Marijuana, a class D felony.

Based on this evidence, a reasonable fact finder could only conclude Ramirez' presence in Indiana on Cause 424, dealing in a schedule IV controlled substance, was secured outside the terms of the Agreement. The fact the Agreement on Detainers Form V transmitted to Michigan had typed upon it "Cause Number 424" is not sufficient evidence to the contrary.

Ramirez' contention on appeal, as in his motion, is the information in Cause 424 should be dismissed because of the State's violation of the provision of the Agreement providing:

> "The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations of [or] complaints which form the basis of the detainer or detainers or for the prosecution on any other

> charge or charges arising out of the same transaction."

I.C. 35-2.1-2-4, Article 5(d). Therefore, Ramirez contends, because the State was unable under the Agreement to try him on a charge not forming the basis of a detainer or arising out of the same transaction, the information in Cause 424 must be dismissed and his conviction reversed.

The interpretation of this provision of the Agreement is an issue of first impression in Indiana.[3] For the purposes of this discussion, we assume, as Ramirez asserts, that the provision was included in the Agreement to protect imprisoned defendants in his position from unwittingly consenting to be returned to another jurisdiction for trial on minor charges only to be tried, once returned, on far more serious outstanding charges.

Nevertheless, there is no merit to Ramirez' argument the information must be dismissed. Jurisdiction over Ramirez' person was not defeated by the manner in which he was brought before the court to stand trial on the

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[3] Ramirez has directed us to, and independent research has revealed, no Indiana cases concerning this particular provision of the Agreement. We do note the presence of Indiana cases holding violations of the Agreement's provisions designed for the protection of the imprisoned defendant are waived unless timely raised at the trial level. *Scrivener v. State*, (1982) Ind., 441 N.E.2d 954 (speedy trial, Article 3(a);) *Webb v. State*, (1982) Ind., 437 N.E.2d 1330 (return without trial, Article 4(e)).

Our research has uncovered cases in other jurisdictions having factual situations similar to Ramirez'. *See Saunders v. State*, (1978) Del., 397 A.2d 548; *State v. Casuso*, (1977) Iowa, 253 N.W.2d 919 (crime committed while in temporary custody under Agreement); *People v. Browning*, (1981) 108 Mich. App. 281, 310 N.W.2d 365 (waived because not raised before or during trial); *Commonwealth v. Frison*, (1981) 301 Pa.Super. 498, 448 A.2d 18 (defendant's presence at his request); *State v. Tyson*, (1980) Tenn. Crim.App., 603 S.W.2d 748 (habitual criminal charge "arising out of same transaction"); *Bokemeyer v. State*, (1981) Tex.Crim.App., 624 S.W.2d 909 (reindictment of same charge). However, in few cases has the substantive issue been before the court as it is here. *See Brown v. District Court*, (1977) 194 Col. 1225, 571 P.2d 1091.

charges in Cause 424. The manner in which a defendant is brought before the court has no effect upon the court's jurisdiction over him. As stated by the United States Supreme Court in *Firsbie v. Collins*, (1952) 342 U.S. 519, 522 (footnote omitted).

> "This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction'. No persuasive reasons are now presented to justify overruling this line of cases."

We acknowledge one of the purposes of the Agreement, affording imprisoned individuals certain statutory rights, is not served where a jurisdiction prosecutes an individual outside the Agreement. Nevertheless, we fail to see how the other avowed purpose of the Agreement, providing a simplified procedure whereby individuals imprisoned in one jurisdiction may be brought to trial on outstanding charges in another jurisdiction, would be served by dismissing the charge against Ramirez.

Although we do not countenance the State's failure to comply with the provisions of the Agreement as to Cause 424, the State's failure does not warrant dismissal of this case. *See Brown v. District Court*, (1977) 194 Colo. 1225, 571 P.2d 1091 (detainer). *Cf. Martin v. State*, (1978) 176 Ind.App. 503, 376 N.E.2d 498 (extradition). This is not to say Ramirez may not have a remedy for the State's failure to file a detainer against him on Cause 424 before trying him in that cause. However, dismissal of the information is not the remedy. The trial court did not commit error in denying his motion to dismiss.

II

Ramirez, having raised at trial the defense of entrapment under I.C. 35-41-3-9 (Burns Code Ed., Repl. 1979), challenges the sufficiency of the evidence showing his predisposition to commit the crime. When the defense of

entrapment is raised, the State must prove 1) the prohibited conduct was not the product of the persuasive efforts of law enforcement officials or 2) regardless of law enforcement efforts, the accused was predisposed to engage in the conduct. *Marts v. State*, (1982) Ind., 432 N.E.2d 18.

The question of predisposition, one of subjective intent, is for the trier of fact. *Voirel v. State*, (1980) Ind.App., 412 N.E.2d 861. Our standard of review of sufficiency of the evidence to support a finding of predisposition, as on all sufficiency of the evidence questions, is clear. We will not weigh conflicting evidence nor judge the credibility of the witnesses. Rather, we will look to the evidence most favorable to the State, together with all reasonable inferences which may be drawn therefrom. If there is evidence of probative value to support the decision of the fact finder, the conviction will not be disturbed. *Everroad v. State*, (1982) Ind., 442 N.E.2d 994. Predisposition may be established by circumstantial evidence. *Voirol v. State*, 412 N.E.2d at 863.

Here, the evidence reveals a Kokomo police informant, Bruce Hamlin (Hamlin), was approached by Ramirez in January 1979 during Hamlin's employment as a courthouse janitor. Ramirez inquired if Hamlin would be interested in selling some controlled substances for him. Subsequently, on January 28, 1979, at Hamlin's residence, Ramirez sold Hamlin a number of tablets later determined to contain diazepam and phenobarbitol. This buy was not controlled by law enforcement officers and Hamlin paid for the drugs with his own money. He was later reimbursed when he turned the tablets over to the police.

On March 9, 1979, Hamlin, who had been searched and wired for sound by the police, purchased fifty (50) methaqualone, diazepam, and phenobarbital tablets from Ramirez. The police monitored this purchase. No money passed to Ramirez at this time because the transaction was a "front" deal with payment to be made at a later date. On March 12, 1979, again searched and wired for

sound, Hamlin paid Ramirez $100 owed for the tablets received on March 9.

Later in the day on March 12, 1979, Hamlin, again searched and wired for sound, purchased an additional fifty tablets containing methaqualone, diazepam, and phenobarbital from Ramirez. The deal was again "fronted" and the tablets were not paid for by Hamlin until March 20, 1979. When Ramirez was arrested pursuant to warrant on March 20, 1979, he was found in possession of five of the $20 bills the police had given Hamlin to pay for the tablets received from Ramirez on March 12, 1979.

Ramirez contends that because he was not found to possess any additional controlled substances at his arrest and because the evidence shows Hamlin instigated the purchases on January 28, 1979, March 9, 1979, and March 12, 1979, his conviction must be reversed. Ramirez contends he was not predisposed to sell the controlled substance and was thus entrapped as a matter of law. Ramirez is incorrect.

Although the actual purchases were instigated by Hamlin, the evidence shows it was Ramirez who, unsolicited, first approached Hamlin with the suggestion Hamlin sell drugs which Ramirez would supply. Further, the evidence shows not an isolated sale, but a series of transactions in controlled substances between Ramirez and Hamlin. This evidence, albeit circumstantial, is sufficient to support the jury's determination Ramirez was predisposed to sell a schedule IV controlled substance.[4] *See Silva v. State*, (1980) Ind.App., 410 N.E.2d 1342 (multiple sales to officers as one circumstance tending to show predisposition).

Ramirez also argues Hamlin's testimony was inherently unbelievable because he was a police informant against

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[4] The record also contains testimony of another individual to whom Ramirez had been selling schedule IV controlled substances shortly before Ramirez's arrest in March 1979. Ramirez had also inquired whether this individual "could get rid of some of them," *i.e.*, sell some of the substances, for Ramirez. Record at 917.

whom charges were pending at the time of the transactions with Ramirez. We disagree. Hamlin's veracity was certainly open to question. However, the record shows the jury was made aware of his criminal history and the possibility of benefits flowing to him in exchange for information he provided and his testimony. The jury, who was in a better position than we to pass upon his credibility, apparently chose to believe Hamlin. We cannot say no reasonable person would have reached that conclusion. *Bentley v. State*, (1981) Ind., 414 N.E.2d 573.

III.

Ramirez contends the trial court erred in ordering his sentence for dealing in a schedule IV controlled substance, Cause 424, and his sentence for dealing in marijuana, Cause 470, to be served consecutively. Having failed to object at the sentencing hearing or to raise the issue in his motion to correct errors, Ramirez necessarily claims this sentencing error is fundamental error.

I.C. 35-50-1-2 (Burns Code Ed., Repl. 1979) provides:

> "(a) Except as provided in subsection (b) of this section, the court shall determine whether terms of imprisonment shall be served concurrently or consecutively.
>
> (b) If a person commits a crime:
>
> (1) After having been arrested for another crime; and
>
> (2) Before the date he is discharged from probation, parole, or a term of imprisonment imposed for that other crime;
>
> the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed."

Ramirez' argument is twofold. He first contends he was improperly sentenced under I.C. 35-50-1-2(b), the

subsection making consecutive sentencing mandatory in certain enumerated situations. He argues his situation does not fall within subsection (b) of the statute with the result his sentence was outside the scope of statutory authority and therefore was fundamental error. We argee with Ramirez that sentencing without statutory authority produces fundamental error. *See Rihl v. State*, (1980) Ind.App., 413 N.E.2d 1046 (prior law vesting authority in trial judge to impose consecutive sentences only where statutorily authorized).

The record of the sentencing hearing shows the sentences for the two crimes were pronounced at the same time. The record further shows the trial judge did not disclose his reasons for imposing consecutive terms. However, Ramirez admits in his brief he was free on bond on Cause 424 when he committed the crime charged in Cause 470, dealing in marijuana.

Ramirez argues that I.C. 35-50-1-2(b) requires mandatory consecutive sentences only where a defendant is *on* parole, probation or serving a term of imprisonment at the time he commits a second offense. Therefore, because he was out on bond and not on probation or imprisoned, Ramirez argues subsection (b) is inapplicable to him.

Initially, we note the statutory language does not require a defendant to be "on" parole, probation or serving a term of imprisonment. Rather, the statutory language speaks of a person who commits a crime during the time period 1) after he is arrested for another crime, and 2) before he is discharged from probation, parole or imprisonment for that other crime. If the legislature had intended the circumstances under which consecutive sentences are mandatory to be limited to the time a defendant is *on* parole, probation, or imprisoned, it is not readily apparent why it included the "after having been arrested" language.

Ramirez directs our attention to the predecessor statute, I.C. 35-8-7.5-1 (Burns Code Ed., Supp. 1977), which specifically addressed the issue of a defendant who committed

a crime while released on bond on a previous charge. Ramirez argues the repeal of this statute and the substitution of I.C. 35-50-1-2(b) evidences the legislative intent to exclude commission of a crime while out on bond as an instance where consecutive sentences are mandatory. We disagree. *See* Governor's Conference on the Indiana Penal Code (1977) at 142 (interpreting I.C. 35-50-1-2 as follows: "The court may impose consecutive sentences if a person commits a second crime while released on bail, probation, or parole, or while confined or an escapee from confinement. Otherwise, the court has discretion as to whether to impose consecutive or concurrent sentences for 2 or more crimes.") *See also Chandler v. States*, (July 26, 1983) Ind. No. 1182 S 430 (crime committed while escaped from incarceration; concurrent sentences reversed because consecutive sentences mandatory). *Contra Garrett v. State*, (1980) Ind.App., 411 N.E.2d 692 (escape).

Ramirez cites *Haggard v. State*, (1983) Ind., 445 N.E. 2d 969, to support his view. Although at first blush some of the language appears to support his position, a careful reading of *Haggard* reveals the Supreme Court was not interpreting I.C. 35-50-1-2(b) but was simply holding the fact scenario in *Haggard* rendered the mandatory provision of the statute inapplicable.[5] Thus, in imposing consecutive sentences in *Haggard*, the trial court was operating at its discretion as authorized by I.C. 35-50-1-2(a), not by law as provided in I.C. 35-50-1-2(b).

However, even assuming Ramirez is correct in his contention his situation does not fall within subsection (b) of the statute mandating consecutive sentences, the trial

---

[5] In *Haggard v. State*, (1933) Ind., 445 N.E.2d 969, the trial court ordered the defendant's commitment to be served consecutively to a commitment for offenses in another county. However, the crimes which resulted in the two commitments were all part of the same transaction. Therefore, factually, I.C. 35-50-1-2(b) Burns Code Ed., Repl. 1979) was inapplicable because an arrest did not intervene between the series of offenses that resulted in the two commitments.

judge was not without authority to order consecutive sentences in this case. Subsection (a) of I.C. 35-50-1-2 endows a trial court judge with discretion in ordering consecutive or concurrent sentences in all situations not enumerated in subsection (b).

Thus, Ramirez' second argument, that the judge committed fundamental error in failing to articulate his reasons for imposing the consecutive sentences, is a contention the trial judge abused his stattuory discretion. Although such an abuse of judicial discretion is erroneous, *see Brown v. State*, (1982) Ind., 442 N.E.2d 1109; *Taylor v. State*, (1982) Ind., 442 N.E.2d 1087, it does not rise to that level of errors deemed to be fundamental. Therefore, having failed to raise this error at the appropriate time, Ramirez has waived it.[6]

IV.

Ramirez' final contention is the trial court erred in failing to grant him 322 days credit time for the time he spent in the Howard County, Indiana jail awaiting trial and sentencing in Cause 424 and Cause 470. The 322 days represent the time between the date of his return to Indiana from his incarceration in Michigan and the date of his sentencing in Cause 424 and Cause 470. Citing *Burnett v. State*, (1982) Ind., 439 N.E.2d 174 and *Dolan v. State*, (1981) Ind.App., 420 N.E.2d 1364, Ramirez contends the 322 days should be credited to the aggregate of the consecutive sentences he received in Cause 424 and Cause 470.

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[6] In any event, reviewing the record we find in the presentence investigation report numerous aggravating circumstances which would justify imposing consecutive sentences. Given the opportunity by advisement in the motion to correct errors, the trial court easily could have provided a statement of aggravating circumstances justifying imposition of consecutive sentences. Thus, according to our Supreme Court in *Beasley v. State*, (1983) Ind., 445 N.E.2d 1372, the error alleged by Ramirez is not fundamental (inadequate statement of aggravating circumstances to enhance sentence).

The State argues because Ramirez apparently received credit against his Michigan sentence for the days he was in the Howard County Jail awaiting trial and sentencing on the Indiana drug charges,[7] he is not entitled to also receive credit time for those days in Indiana. The State is incorrect. There is no indication the sentences in Cause 424 and Cause 470 were to run consecutively to the Michigan sentence. Because the Michigan and Indiana sentences must therefore be assumed to be concurrent, it would appear Ramirez was entitled to have the 322 days credited to both his Michigan sentence and to the aggregate of the two Indiana sentences. *See Simms v. State*, (1981) Ind.App., 421 N.E.2d 698; *Dolan v. State*, 420 N.E.2d 1364 (interpreting I.C. 35-30-6-3 (Burns Code Ed. Repl. 1979)).

However, our review of the record of the proceedings has apprised us the credit time situation is more complicated than the parties' arguments have made it appear. Although not discussed by the parties, the record reveals that in calculating Ramirez' credit time the trial court considered a third Indiana sentence, one arising as a result of a conviction of theft under Cause 427. It appears from the dialogue between the trial judge and Ramirez' attorney at the sentencing hearing that the 322 days were to be credited to Ramirez' theft sentence. Record at 1038. However, there is nothing in the record presented to us to indicate the 322 days actually were credited to the theft sentence or to indicate whether the theft sentence was to be served consecutively or concurrently with the drug sentences. Therefore, although the law favors Ramirez' position, we lack sufficient factual data to enable us to apply the law.

Thus, we remand to the trial court with instructions to conduct a hearing to recalculate Ramirez' credit time as

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[7] The Agreement on Detainers, I.C. 35-2.1-2-4, Article 5(f) provides that when a prisoner is in the temporary custody of a requesting state, time being served on the prisoner's sentence in the sending state shall continue to run.

applicable to Cause 427 (theft) as well as to Cause 424 and Cause 470 (drug charges).[8] In all other respects, the trial court's decision is affirmed.

Buchanan, C. J., concurs.

Sullivan, J., concurs.

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[8] The trial court's reconsideration on remand should include an additional factor. Ramirez argues his bail bo[illegible] in Cause 424 was released two days after his return to Indiana [illegible] Michigan. Thus, he contends, there is no doubt his presence in t[illegible] Howard County Jail was "as a result of" the charges pending in Cause 424. The record presented us in Cause 424 does indeed indicate a bond was released, but the bond is described as an "appeal" bond. Record at 6, 160. Further, the record of the sentencing hearing indicates the bond released was the appeal bond issued in the theft case, Cause 427. The status of bond, if any, in Cause 424 and Cause 470, is not clear from the record. Because the bond status may affect the credit time calculation, *see DeWees v. State*, (1983) Ind.App., 444 N.E.2d 332, the trial court's reconsideration on remand should include this issue.

DENIAL OF PETITION TO TRANSFER TO SUPREME COURT OF INDIANA

Appellant's Petition to Transfer is hereby DENIED this 11th day of May, 1984, without opinion.

All Justices concur.

/s/ Roger O. DeBruler
ROGER O. DEBRULER
Acting Chief Justice
of Indiana

PETITION FOR CERTIORARI GRANTED
OCTOBER 29, 1984

SUPREME COURT OF THE UNITED STATES

No. 84-5059

PATRICK RAMIREZ, PETITIONER

v.

INDIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 29, 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1985 487048 11027